S. HRG. 99-594

JUDICIAL SURVIVORS' ANNUITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1392

A BILL TO AMEND TITLE 28 OF THE UNITED STATES CODE REGARDING JUDICIAL ANNUITIES

AND

H.R. 3570

AN ACT TO AMEND TITLE 28, UNITED STATES CODE, TO REFORM AND IMPROVE THE FEDERAL JUSTICES AND JUDGES SURVIVORS' ANNUITIES PROGRAM, AND FOR OTHER PURPOSES

FEBRUARY 19, 1986

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JUDICIAL SURVIVORS' ANNUITIES

WEDNESDAY, FEBRUARY 19, 1986

U.S. SENATE,
SUBCOMMITTEE ON COURTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. John P. East (chairman of the subcommittee) presiding.

Present: Senators Heflin and DeConcini.

OPENING STATEMENT OF HON. JOHN P. EAST, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON COURTS

Senator EAST. I would like to call to order the Subcommittee on Courts of the Judiciary Committee. And I wish to welcome everyone this morning.

We are here for the purposes of conducting a hearing on H.R. 3570 and also S. 1392 dealing with the question of judicial survivors' annuities.

We are honored here this morning to have as witnesses a distinguished colleague and a panel of three distinguished judges. We shall turn to them in a moment.

And I also wish to welcome my distinguished colleagues here on the minority side, Senators Heflin and DeConcini. We shall turn to their comments in a moment.

I would like to make just a few general observations on the subject of today's hearing. It is obviously one of a compelling, but also, I might add, a technical nature. I think the testimony we are about to hear will be very valuable to us in trying to find some point of balance or equilibrium in dealing with very serious problems facing the survivors annuity system.

Under that system, which was created in 1976, an article III judge has an option to have 4.5 percent of his income withheld as a contribution to the Judicial Survivors' Annuities Fund. That contribution is matched by the Federal Government. The 1976 scheme provides that the judge's surviving spouse could receive up to 40 percent of highest 3-year pay and surviving children up to $1,540 per year. In the last 10 years we have seen a great erosion in the value of the children's benefits while the lack of a minimum benefit for surviving spouses has created a large element of financial insecurity in many judicial households.

So we have reached a point that is very critical.

This problem has already been dealt with in the House through the passage of H.R. 3570, which is before us here this morning. We also have before us S. 1392, which is very similar and was introduced by Senator DeConcini of Arizona.

I suppose the problem we face here in trying to find an equitable solution is obviously the prescriptions imposed on us by fiscal considerations, particularly in this time of budgetary restraint.

But acknowledging then that we work within certain limitations, certain confinements, we can nevertheless say that there is a general consensus that a compelling need exists here. Quite simply, what we are trying to do is to find an appropriate solution and propose that to the Judiciary Committee and, ultimately, to the U.S. Senate.

So lest I carry on at too great a length, I shall simply cease with those general remarks. But I hope that my comments will serve to shed a little bit of light on what we are up against this morning.

[Senator East's opening statement and copies of S. 1392 and H.R. 3570 follow:]

Opening Statement of Senator John P. East

Before proceeding with our hearing this morning, I would like to take just a few minutes to address the issue of Judicial Survivor Annuities.

The survivors annuity system which is currently in place was last amended by Congress in 1976. Under that system, an Article III judge has the option of having 4.5% of his income withheld as a contribution, matched by the Federal government, to the annuity fund. The 1976 scheme provided that a judge's surviving spouse could receive up to 40% of his highest three years average pay and that surviving minor children could receive up to $1,548 per year.

Under the inflationary pressures of the late 1970s, many members of the Third Branch saw the financial security which they sought to provide for their dependants severely eroded. With the passage of the time, inflation devalued the statutory dollar amount of children's benefits while the lack of any floor on benefits for surviving spouses provided a large element of financial insecurity to a judge's family during the early years of his career on the bench. Predictably, fewer new judges have elected to join the fund.

Although the problems which plague the Judicial Survivors Annuity Fund are well recognized, problems have also arisen in crafting a proper remedy. Indeed, the proposal which we have before us today, in both its House and Senate versions, is essentially the same as the proposals on which this Subcommittee heard testimony during both the 97th and 98th Congresses. If anything, the government's mounting fiscal problems have served only to increase those difficulties. In the era of Gramm-Rudman we must be doubly cautious in the commitments which we make on the Federal purse strings both in the near and long term. Having said that, however, let me hasten to add that it is my hope that today will mark the beginning of a successful effort to achieve a fiscally responsible reform of the Judicial Survivors Annuity Fund.

99TH CONGRESS
1ST SESSION

S. 1392

To amend title 28 of the United States Code regarding judicial annuities.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 28 of the United States Code regarding judicial annuities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Survivors' Annuities Reform Act of 1985".

ANNUITIES FOR SURVIVORS

SEC. 2. (a) Subsections (b) and (d) of section 376 of title 28, United States Code, are amended by striking out "4.5 percent" each place it appears and inserting in lieu thereof "5.0 percent".

(b) Subsection (c) of section 376 of title 28, United States Code, is amended by striking out the first sentence

and inserting in lieu thereof the following: "There shall also be deposited to the credit of the 'Judicial Survivors' Annuities Fund', in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts required to maintain the actuarial balance of the program as such amounts are actuarially determined on an annual basis in accordance with the provisions of subtitle C of part II of title I of the Budget and Accounting Procedures Act of 1950 (Public Law 95–595; 31 U.S.C. 68a).".

(c) Subsection (h)(1)(B) of section 376 of title 28, United States Code, is amended by striking out clauses (i) and (ii) and the matter between clause (ii) and subparagraph (C) and inserting in lieu thereof the following:

"(i) 10 percent of the average annual salary amount determined in accordance with the provisions of subsection (l) of this section; or

"(ii) 20 percent of such average annual salary amount, divided by the number of children; or".

(d) Subsection (h)(1)(C) of section 376 of title 28, United States Code, is amended by striking out clauses (ii) and (iii) and the matter between clause (iii) and paragraph (2) and inserting in lieu thereof the following:

"(ii) 20 percent of the average annual salary amount determined in accordance with the provisions of subsection (l) of this section; or

"(iii) 40 percent of such average annual salary amount, divided by the number of children.".

(e) Subsection (l) of section 376 of title 28, United States Code, is amended—

(1) by striking out "1 1/4 percent", in paragraph (1), and inserting in lieu thereof "1.5 percent"; and

(2) by striking out all after "of this subsection" in paragraph (2) and inserting in lieu thereof the following: ", except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 30 percent of such average annual salary, and that any amount determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, if applicable.".

(f) Subsection (h)(2) of section 376 of title 28, United States Code, is amended by inserting before the period, "prior to the attainment of sixty years of age".

AVAILABILITY OF BENEFITS

SEC. 3. The benefits conferred by this Act shall immediately become available to any individual becoming eligible for an annuity under section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, except that, although the rights of any judicial official electing to come within the purview of section 376 of title 28,

United States Code, on or after the date this Act becomes effective, shall be determined exclusively under the provisions of such section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of such individual having contributed to the judicial survivors annuity fund before the effective date of this Act.

RIGHT TO REVOKE ELECTION TO PARTICIPATE

SEC. 4. At any time within one hundred and eighty days after the effective date of this Act, any judicial official who is participating in the judicial survivors annuity program created by the Judicial Survivors' Annuities Reform Act (28 U.S.C. 376; 90 Stat. 2603), on such date shall be entitled to revoke his or her earlier election to participate in such program and thereby withdraw from participation in the program as amended by this Act, except that—

(a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts,

(b) any such writing shall be deemed to have become effective no sooner than the date such writing is received by the Director,

(c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judi-

cial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to the date of such revocation, shall thereafter be returned to such judicial official in a lump-sum refund payment, and

(d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code, as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained pursuant to this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date such amount is redeposited.

Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to such revocation.

EFFECTIVE DATE

SEC. 5. This Act shall become effective on the first day of the third month following the month in which it is enacted.

Calendar No. 572

99TH CONGRESS
2D SESSION

H. R. 3570

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 1985

Received; read twice and referred to the Committee on the Judiciary

MARCH 21 (legislative day, MARCH 18), 1986

Reported by Mr. THURMOND, with amendments

[Omit the part struck through and insert the material printed in italic]

AN ACT

To amend title 28, United States Code, to reform and improve the Federal justices and judges survivors' annuities program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Improvements Act of 1985".

SEC. 2. JUDICIAL SURVIVORS' ANNUITIES AMENDMENTS.

(a) BENEFIT REFORMS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended by striking out "or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective;" and inserting in lieu thereof "(iii) January 1, 1977; or (iv) January 1, 1986;".

(2) Subsections (b) and (d) are each amended by striking out "4.5 percent" each place it appears and inserting in lieu thereof "5 percent".

(3) Subsection (c) is amended to read as follows:

"(c)(1) There shall also be deposited to the credit of the Judicial Survivors' Annuities Fund, in accordance with such procedures as the Comptroller General of the United States may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors' Annuities ~~Fund.~~ *Fund; Provided, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary.* Such deposits shall, subject to appropriation Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors' Annuities Fund for any use required under this section.

"(2) For purposes of paragraph (1), the term 'unfunded liability' means the estimated excess, ~~determined by the Comptroller General on an annual basis,~~ *determined on an annual basis in accordance with the provisions of section*

9503 of title 31, United States Code, of the present value of all benefits payable from the Judicial Survivors' Annuities Fund, over the sum of—

"(A) the present value of deductions to be withheld from the future basic pay of judicial officials; plus

"(B) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States Code, with respect to the judicial survivors' annuities plan established by this section.

"(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.".

(3) Subsection (h) is amended—

(A) in paragraph (1)(B), by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) 10 percent of the average annual salary determined under subsection (1)(1) of this section; or

"(ii) 20 percent of such average annual salary, divided by the number of children;";

(B) in paragraph (1)(C) by striking out clauses (ii) and (iii) and inserting in lieu thereof the following:

"(ii) 20 percent of the average annual salary determined under subsection (l)(1) of this section; or

"(iii) 40 percent of such average annual salary amount, divided by the number of children;"; and

(C) in paragraph (2) by inserting immediately after "remarriage" the following: "before attaining age 55".

(4) Subsection (l) is amended—

(A) by striking out "1¼ percent" and inserting in lieu thereof "1.5 percent";

(B) in paragraph (2) by striking out the colon after "subsection" and inserting in lieu thereof a semicolon; and

(C) by striking out the proviso and inserting in lieu thereof the following: "except that such annuity shall not exceed an amount equal to ~~55~~ *50* percent of such average annual salary, nor be less than an amount equal to ~~30~~ *25* percent of such average annual salary. Any annuity determined in accordance with the provisions of this

subsection shall be reduced to the extent required by subsection (d) of this section.".

~~(5) Subsection (a) is amended—~~

~~(A) in paragraph (1)(C) by inserting "or Deputy Director" immediately after "Director"; and~~

~~(B) in paragraph (2)(C) by inserting "or Deputy Director" immediately after "Director".~~

(b) BENEFICIARIES.—The benefits conferred by section 376 of title 28, United States Code, by reason of the amendments made by this section shall apply only to individuals who become eligible for annuities under such section on or after the effective date of this section, except that—

(1) such annuities shall be computed in accordance with the provisions of section 376 of title 28, United States Code, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the effective date of this section, or after such effective date pursuant to an agreement entered into before such effective date.

(c) REVOCATION.—(1) Within 180 days after the effective date of this section, any judicial official who, before such

effective date, made an election under section 376 of title 28, United States Code, to come within the purview of that section, shall be entitled to revoke that election. Such revocation shall constitute a complete withdrawal from the judicial survivors' annuities program provided for in such section 376. No such revocation shall be effective unless it is submitted in writing to the Director of the Administrative Office of the United States Courts, and until such writing is received by the Director. Upon receipt by the Director of such writing, any rights to survivorship benefits for the survivors of such judicial official shall terminate, and all amounts credited to the individual account of such judicial official under section 376(e), together with interest at 3 percent per annum, compounded on December 31 of each year to such date of revocation, shall be returned to that judicial official in a lump-sum payment.

(2) Any judicial official who makes a revocation under paragraph (1) of this subsection and who thereafter becomes eligible to make an election under section 376(b) of title 28, United States Code, may make such election only if such judicial official redeposits, to the credit of the Judicial Survivors' Annuities Fund, the full amount of the lump-sum payment made to such judicial official under paragraph (1) of this subsection, together with interest at 3 percent per annum, compounded on December 31 of each year from the date of

such revocation until the date upon which that amount is so redeposited.

(3) Any judicial official who fails to revoke an election in accordance with paragraph (1) of this subsection shall be deemed to have irrevocably waived the right to make that revocation.

(d) ANNUITIES FOR FORMER SPOUSES.—

(1) Section 376 of title 28, United States Code, is amended in subsection (a)—

(A) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(B) by adding at the end the following new paragraph:

"(6) 'former spouse' means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months.".

(2) Section 376 of title 28, United States Code, is amended by adding at the end the following new subsections:

"(s) A judicial official who has a former spouse may elect, under procedures prescribed by the Director of the Administrative Office of the United States Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of

retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

"(1) shall not be effective to the extent that it—

"(A) conflicts with—

"(i) any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

"(ii) any agreement referred to in such subsection which was entered into before such date; or

"(B) would cause the total of survivor annuities payable under subsections (h) and (t) based on the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (l)) of such official; and

"(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Director of the Administrative Office of the United States Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Director that the spouse's whereabouts cannot be determined, or that, due to exception-

al circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

"(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

"(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

"(A) the maximum amount that would be payable as an annuity to a widow or widower under subsection (l), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

"(B) the amount of any annuity payable under this subsection to any other former spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

"(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

"(A) shall not commence before—

"(i) the day after the judicial official dies, or

"(ii) the first day of the second month beginning after the date on which the Director of the Administrative Office of the United States Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Director may prescribe,

whichever is later, and

"(B) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

"(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

"(A) if such modification is made after the retirement of the judicial official concerned, and

"(B) to the extent that such modification involves an annuity under this subsection.".

(3)(A) Subsection (l) of section 376 of title 28, United States Code, (as amended by subsection (a)(4)(C) of this section) is amended by striking out the period at the end of the last sentence and by adding at the end the following: ", and by the amount of any annuity payable to a former spouse under subsection (t)."

(B) Subsection (n) of section 376 of such title is amended in the last sentence by inserting after "equity," the following: "except as provided in subsections (s) and (t),".

(C) Subsection (o) of section 376 of such title is amended in paragraphs (2) and (3) by inserting "or (t)" after "subsection (h)" each place it appears.

(4) Payments of retirement salary as defined in section 376(a)(2) of title 28, United States Code, which would otherwise be made to the judicial official upon whose service the retirement salary is based, shall be paid (in whole or in part) to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person. This paragraph shall apply only to payments made after the date of receipt by the Director of the Administrative Office of United States Courts of written notice of such decree, order, or agreement, and such additional information and documentation as the Director may prescribe. As used in

this paragraph, "court" means any court of any State or the District of Columbia.

(e) CREDITABLE SERVICE.—Section 376(k)(1) of title 28 is amended by deleting the phrase "subsection (b) of".

~~(e)~~*(f)* EFFECTIVE DATE.—This section shall take effect on October 1, 1986.

SEC. 3. REMOVAL JURISDICTION.

(a) SECTION 1441 AMENDMENT.—Section 1441 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to claims in civil actions commenced in State courts on or after the date of the enactment of this section.

~~SEC. 4. TRAVEL EXPENSES OF JUSTICES AND JUDGES.~~

~~(a) SECTION 456 AMENDMENT.—Section 456(a) of title 28, United States Code, is amended by striking out "for any continuous period" and all that follows through the end of the subsection and inserting in lieu thereof the following: "(1) all necessary transportation expenses; and (2) a per diem allow-~~

~~ance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, United States Code, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States. In determining necessary expenses, the Director shall take into account the reasonable costs of transportation and subsistence generally incurred for travel to the geographic area involved.".~~

~~(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1986.~~

SEC. ~~5.~~ *4.* COLLECTION OF FEES FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

(a) SECTION 1914 AMENDMENT.—Section 1914 of title 28, United States Code, relating to district court fees, is amended by striking out subsection (d).

(b) AMENDMENTS TO DISTRICT OF COLUMBIA CODE.—

(1) Section 15–701(a) of the District of Columbia Code, relating to compensation taxed as costs, is amended by striking out "clerk of the United States District Court for the District of Columbia,".

(2) Section 15–702 of such code, relating to docket fees, is amended—

(A) by striking out "(a)" and all that follows through "(b)"; and

(B) by striking out the section heading and inserting in lieu thereof the following:

"§ 15–702. Attorney fees taxed as costs"

(3) Section 15–703 of such code, relating to deposit and security for costs, is amended—

(A) by striking out "(a)" and all that follows through "(b)" and inserting in lieu thereof "(a)";

(B) in the undesignated paragraph by inserting "(b)" immediately before "A nonresident"; and

(C) in the section heading by striking out "Deposit for costs; security" and inserting in lieu thereof "Security".

(4) Section 15–704 of such code, relating to advance payment of costs and fees, is amended—

(A) in subsection (a) by striking out "(a)" and by striking out "the clerk of the United States District Court for the District of Columbia and"; and

(B) by striking out subsection (b).

(5) Section 15–706 of such code, relating to clerk's fees in the United States District Court for the District of Columbia, is hereby repealed.

(6) Section 15–709(a) of such code, relating to fees and costs in Superior Court, is amended by striking out the second sentence.

(7) The table of contents for chapter 7 of title 15 of such code, relating to fees and costs, is amended—

(A) by striking out the item relating to section 15–702 and inserting in lieu thereof

"15–702. Attorney fees taxed as costs."; and

(B) by striking out "Deposit for costs; security" in the item relating to section 15–703 and inserting in lieu thereof "Security".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act.

SEC. ~~5.~~ 5. JUDICIAL REVIEW OF FEDERAL MARITIME COMMISSION AND MARITIME ADMINISTRATION ORDERS.

(a) SECTION 2342 AMENDMENT.—Section 2342(3) of title 28, United States Code, is amended to read as follows:

"(3) all rules, regulations, or final orders of—

"(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, 41 or 43 of the Shipping Act, 1916 (46 U.S.C. App. 839); and

"(B) the Federal Maritime Commission issued pursuant to—

"(i) section 23, 25, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 822, 824, or 841a);

"(ii) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

"(iii) section 2, 3, 4, or 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 844, 845, 845a, or 845b);

"(iv) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

"(v) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d);".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any rule, regulation, or final order described in such amendment which is issued on or after the date of the enactment of this Act.

SEC. ~~7.~~ 6. TECHNICAL AMENDMENTS.

(a) REDESIGNATION OF DUPLICATE SECTIONS.—

(1) TITLE 28 AMENDMENTS.—Chapter 85 of title 28, United States Code, is amended—

(A) in the table of sections by striking out

"1364. Senate Actions.
"1364. Construction of references to laws of the United States or Acts of Congress."

and inserting in lieu thereof the following:

"1365. Senate Actions.
"1366. Construction of references to laws of the United States or Acts of Congress.";

(B) by striking out the section heading

"§ 1364. Senate actions"

and inserting in lieu thereof the following:

"§ 1365. Senate actions"; and

(C) by striking out the section heading

"§ 1364. Construction of references to laws of the United States or Acts of Congress"

and inserting in lieu thereof the following:

"§ 1366. Construction of references to laws of the United States or Acts of Congress".

(2) CONFORMING AMENDMENT.—Section 705(a) of the Ethics in Government Act of 1978 (P.L. 95-521; 2 U.S.C. 288d(a)) is amended by striking out "1364" and substituting "1365".

(b) DELETION OF INCORRECT REFERENCES.—Paragraph (3) of section 620(b) of title 28, United States Code, is amended—

(1) by striking out "referees,"; and

(2) by substituting "magistrates" for "commissioners".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Passed the House of Representatives December 16, 1985.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Senator EAST. I would like to turn then to the distinguished ranking minority leader of the subcommittee, Senator Heflin of Alabama.

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. I would like to thank you, Senator East, for holding these hearings. The inadequate survivors annuity for spouses of judges has been a concern of mine. I remember a number of years ago reading that if a U.S. Supreme Court Justice died, the widow of the Justice had money that she could live on.

Then when I came to the Senate in 1980, it was brought to my attention then that there were five widows of the Justices of the U.S. Supreme Court who had not received any cost-of-living increases for a long time. And the benefits that they received were very meager.

We passed legislation, which is now section 376 of title 28 of the United States Code, to correct this.

In 1976, Congress revised section 376 to establish what was thought to be an exemplary Federal program to provide material security for the families of Federal district and circuit court judges. The program was believed at the time to be an attractive enough program to assure participation of all judges who needed protection for their families.

The annuity would be regularly and predictably adjusted to affect inflation in direct correlation to judges' salaries. Unfortunately, the annual adjustments in the judicial salary simply did not survive budget cuts needed in response to our Nation's increasingly grave economic situation. As a result, annuity payment amounts have not increased as anticipated.

The attractiveness of the investment package has been further eroded by commercial IRA plans which some judges have found to be better buys for their money. And as a consequence, participation in the plan by new judges has dramatically diminished.

In 1976, 90 percent of the total number of Federal judges participated in the program. In each of the last 3 years, fewer than 25

percent of the newly appointed judges have elected to participate. If this trend continues, the result, of course, will mean that the program will be on the verge of bankruptcy. H.R. 3570 and the DeConcini bill would increase the judges' contributions substantially and improve the Government's matching contribution, accelerate the schedule of benefit payments, and authorize a minimum floor annuity. The proposed changes in H.R. 3570 are actuarially sound and assure that the percentage of the Government matching funds do not rise to a fiscally unacceptable figure.

Judges who may find the new program's high contribution rates unacceptable can leave the program without penalty, and judges who wish to operate in the new program would be able to do so.

Mr. Chairman, our quest is to find outstanding individuals to serve in the judiciary. We must not underestimate the effect that inadequate benefits will have on the qualified individual's decision to accept or reject the Presidential call to become a Federal judge, and whether a sitting judge will stay on the bench or resign.

I have heard former Judge William Mulligan quoted as saying: "I can afford to live on the salary of a Federal Judge but I cannot afford to die on it." I look forward to working with you, Mr. Chairman, to seek an expeditious solution to this problem.

Senator EAST. Senator DeConcini.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, I want to thank you for holding these hearings on S. 1392 and H.R. 3570. The issue of judicial survival annuity is extremely important. I join with my colleague from Alabama in calling for an expeditious quick action on this.

These bills and this hearing reflect the responsiveness to the apprehension of Federal judges concerning their ability to provide a reasonable degree of security for their families under than current judicial survival annuity program.

Under the present law a judge with modest personal capital who dies after serving on the bench a limited number of years may leave a surviving spouse with inadequate annuity. This bill responds to that concern and others.

It addresses three primary areas of needed changes. First, it reforms the amount of benefits by establishing a floor of 30 percent of the highest salary of the judge to which a surviving spouse would be entitled. Present law has no floor.

Second, it preserves the annuity program's financial integrity. And third, it adjusts the eligibility standard for survivors.

I also thank the Senator from Missouri, who is going to testify, for his leadership role. He has worked hard to improve the annuity of judges.

This is a small matter, Mr. Chairman, in light of all the big questions we have confronting us in the Judiciary Committee and in the Congress in general. But it is one that we just cannot neglect. I complement the chairman immensely for moving forward on this legislation. Thank you.

Senator EAST. Thank you, Senator. As you have indicated, we are delighted to have with us this morning our distinguished colleague who has certainly done a great deal of work in this area.

Senator Eagleton, we are happy to hear your comments on the matter.

STATEMENT OF HON. THOMAS F. EAGLETON, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator EAGLETON. Thank you, Mr. Chairman. And thank you, Mr. Heflin, Mr. DeConcini.

I ask unanimous consent that my statement be printed in the record as though read.

Let me explain my interest in the subject matter. A couple of years ago the Senate Governmental Affairs Committee undertook the arduous task of writing a new civil service retirement system for the entire Federal Government. Our efforts have resulted in a bill passing in the Senate and we are now working in conference with the House to have that bill passed sometime this year.

While we were going through an exhaustive examination of pension benefits and survivors benefits and the like, we found that survivor benefits for judges were absolutely atrocious. I cannot think of any other word that better sums it up.

And I think we all know, as Senator Heflin himself alluded to, the tragedy that happened 30 years ago with the widow of Justice Frankfurter. At that time her survivor benefits were $5,000 a year. Each year, toward the end of the year, the law clerks—and I know one of them—would meet, to go over what her bills were for that year—she was in a nursing home—what her medical bills were, et cetera. The bills were then divided up among Justice Frankfurter's law clerks to pay her bills—a tragedy of significant proportion.

Now we look at the survivor benefits existing today. For instance, if you serve 10 years as a Federal judge, your survivor benefits for your widow would be about $9,300 a year. Not every lawyer that becomes a Federal judge is a rich man. One of your witnesses here today is a good friend of mine, the Federal district judge from eastern Missouri. He is rich in spirit, rich in talent, rich in intellect, but he is not on the Fortune 500 list. If he were to die today, his widow—I think Bill has been on the bench, what, about 5 years?—his widow would receive survivor benefits of $4,700 a year.

That should not be. Our Government can do better than that, and must do better than that. So that is why I am testifying here today, Mr. Chairman. Based on the experience that I have had working on analogous legislation in the Senate Governmental Affairs Committee and based on my gut feeling that meager, minuscule, survivor benefits—as were provided in the past to the widow of Justice Frankfurter and might be provided in the future to widows of existing judges—are just grossly inadequate in today's economy.

Thank you very much.

[Senator Eagleton's prepared statement follows:]

PREPARED STATEMENT OF THOMAS F. EAGLETON

I am pleased to appear here today to express my full support of H. R. 3570, the proposed Judiciary Improvements Act. The Act would increase the level of death benefits provided to the surviving spouse and children of a deceased Federal judge -- an increase sorely needed and long over due in my opinion. Concurrently, it would increase the rate of contributions for those who choose to participate in the survivor benefit plan.

The present Federal Judicial Survivors' Annuity Plan began in 1956 when the Congress created a contributory plan under which benefits would be paid to the widows and dependents of Federal judges. However, the plan included only Federal district and circuit court judges. Justices of the Supreme Court were not included in this plan because in 1954 their widows had been granted the same noncontributory, $5,000 annual pension paid to Presidential widows. In 1972, the Congress passed a special bill to handle the problem faced by the widow of one of our most prominent former justices of the U. S. Supreme Court. It was disclosed that Mrs. Felix Frankfurter was in dire financial straits because her $5,000 government pension was insufficient to meet her living and medical expenses. Each year, law clerks at the Court would take up a collection to provide Mrs. Frankfurter with a measure of financial relief. As a result of the publicity, the Congress passed legislation doubling the pensions of all widows of Supreme Court justices to $10,000 and giving the justices the option to participate in the contributory Judicial Survivors' Annuity Plan.

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Par'ners in large law firms are usually provided with a survivor benefit package that includes a generous group life insurance policy -- at no cost, a vested share in the partnership, and a Keogh plan. Under current survivor benefit provisions, the surviving spouse of a Federal justice or judge receives an annuity equal to 1 1/4 percent of the deceased judge's "high-3" years average salary for each year of creditable service. In other words, assuming a high-3 salary of $75,000, the surviving spouse of a judge who died after having served five years on the bench would receive an annuity of about $4,700 a year. With 10 years of service, the amount would be only $9,375. Also, the surviving minor children of a deceased judge receive an annual benefit of between $900 and $5,580, depending on the number of children and whether there is a surviving spouse.

Since 1977, both the judiciary and Members of Congress have advocated changes in the survivors' annuity plan. In 1982, Judge Irving S. Kaufman chaired the Committee on the Judicial Branch of the United States Judicial Conference and reported that the survivors' annuity program needed to be reformed in order to retain a strong judiciary and discourage judicial resignations which had been rapidly increasing in recent years. The provisions of H. R. 3570 substantially reflect the recommendations which judge Kaufman made to the Committee on the Judicial Branch.

In closing, I want to say again that I fully endorse thi: measure and asked that you give it favorable consideration in your deliberations.

Thank you Mr. Chairman.

Senator EAST. Thank you, Senator.

Are there any questions anyone has? If not, we will turn to our panel please. Would Judges Spencer Williams, William L. Hungate, and Frank M. Coffin please come forward.

Gentlemen, I welcome you this morning.

I would like to note that the Honorable Spencer Williams is president of the Federal Judges Association, Judge Hungate is chairman of the Conference of Federal Trial Judges of the American Bar Association, and Judge Frank M. Coffin is chairman of the Judicial Branch Committee of the Judicial Conference of the United States.

Again, gentlemen, I welcome you and appreciate your coming and providing your testimony on this matter.

I would remind you that any printed materials you have will be made a part of the permanent record. And since this subject is by definition rather technical, we would like to leave the record open for further written questions the subcommittee may have for this panel beyond the time of this hearing.

Finally, I would request that if we could work within some reasonable time limit, I am going to propose 15 minutes per person, that would give us a total of 45 minutes of direct testimony. I think that will give us a good overview of the problem. Then we could probe more deeply in the time after the conclusion of our hearing this morning.

So if that is satisfactory with you, we will confine the testimony to 15 minutes per person.

I turn to you, Judge Williams.

PANEL CONSISTING OF HON. SPENCER WILLIAMS, PRESIDENT, FEDERAL JUDGES ASSOCIATION; HON. WILLIAM L. HUNGATE, CHAIRMAN, CONFERENCE OF FEDERAL TRIAL JUDGES, AMERICAN BAR ASSOCIATION; AND HON. FRANK M. COFFIN, CHAIRMAN, JUDICIAL BRANCH COMMITTEE, JUDICIAL CONFERENCE OF THE UNITED STATES

Judge WILLIAMS. Thank you, Mr. Chairman, Senator Heflin.

I am a U.S. district judge from San Francisco and, as mentioned by the chairman, appear before you today as president of the Federal Judges Association. The members of the association are very pleased and grateful that we have been asked to testify.

The association was organized in 1982. It now consists of almost 500 active and senior article III judges from the various districts and circuits and special courts of the Federal judiciary. We currently represent over half of the members of the Federal judiciary.

We are a grassroots organization whose stated purpose is to seek the highest quality justice for the people of the United States. Our constitution declares that preserving and protecting the ability of the Federal judiciary to attract and retain the best qualified men and women for judicial service is critical for the highest quality justice.

That is why I am here today. We believe that persons who are considering either joining or leaving the Federal bench will weigh among other things what effect their decision will have on the well-being of their survivors.

The decision of a candidate for judicial office to seek or accept a Federal judgeship, and the decision of an incumbent judge to stay or not to stay in judicial office when faced with attractive offers to return to private practice, turn in large part on what each must give up in the way of income or other benefits in exchange for the honor, privilege, and the satisfaction of serving his country in this most important office.

An additional and equally compelling question is what that candidate or incumbent will require his spouse or his children to give us so that he may accept or continue to serve in a judicial capacity.

The program presently offered the survivors of deceased Federal judges is so bad and inequitable it is embarrassing.

I do not plan to take the committee's time to detail the woeful inadequacies of the present program, as to other witnesses have already done so, and I know you are familiar with all the aspects of the program.

Basically what we need is a guaranteed minimum respectable allowance for the surviving spouses and minor children of deceased Federal judges regardless of how long they have served on the bench.

In prior testimony before this committee last year I spoke of the tragedy of Tibby West and the agony that befell her when her Federal judge husband died and left her, after 7 years of service, trying to support herself on the $308 a month that she received under the existing program, and trying to support her four minor children on the additional $142 for all four.

This is disgraceful and does not come close to matching what is offered in other branches of this Government or the private sector. In my own State of California, State judges have often been outstanding candidates for the Federal judiciary, but this source has veritably dried up, which is understandable when you compare the State program for judicial survivors with the Federal program.

In the State program judges are covered as soon as they are sworn in. Under our Federal program the survivor benefits are accrued at the rate of one and one-quarter per year of service. In the State program they are guaranteed a minimum of 25 percent of judicial salary from the very beginning.

Incidentally, as of July 1 of 1986, the trial judges in California State courts will receive $80,984, and the appellant and supreme court judges receive more than that. So their benefits, floor benefits, will be $20,246, $23,000, $24,000, $25,000 respectively. The survivors of Federal judges earning comparable salaries would not receive benefits at those levels until after 15 years of service.

Furthermore, under the State system survivors would receive 37½ percent of the income after 20 years, while Federal survivors would not receive that amount unless their decedent had served 31 years.

A comparison with the existing civil service and congressional survivors benefits programs also shows that current judicial survivors program is seriously deficient. First of all, congressional and civil service survivors programs have a floor, they have a minimum, while the judiciary program does not. A comparison of these programs prepared last May for FJA by Ruth Gordon, an attorney, demonstrates that the greatest inequities occur when an appointee

Senator or Federal judge dies at an early age with few years of Federal service. A copy of the report is attached to my statement.

For example, if a Senator and a judge assume their office at 43 years of age and die 18 months later, the spouse of the Senator would receive approximately $12,907 per year, and the judge's spouse will receive approximately less than $1,500 a year. Now, neither is adequate, but both are inadequate. But the discrepancy, due primarily to the absence of a floor in the judicial survivors program, is really startling.

The report poses various hypothetical situations as to age and length of service in the three branches and makes a comparison of the benefits. And they come much closer together as length of service increases. But the bottom line is that the judicial survivors program must be amended and must be given a floor. And the bills before you do that.

The great bulk of the benefits of these bills will of course go to the younger judges whose survivors benefits will jump from 1¼ percent of the salary after 18 months to a 30-percent floor. A judge who served 20 years or more will receive comparatively little in return for his increased contribution. But the older judges I represent wholeheartedly support the measure, because they believe it will help preserve the quality of the Federal bench by making it easier for the young judges, particularly with minor children, to accept a Federal judicial appointment. And that is an important point in the thinking of every sitting judge who has discussed this matter with me.

The most noteworthy and necessary provision, however, is that there would be minimum allowance of 30 percent of the average high 3-year salary, or $22,000 a year for the survivor of a district judge. The need for this floor to protect the survivors of judges who die at a relatively early age cannot be overemphasized. The program will not put a survivor in the lap of luxury. But we are not seeking luxury, only equity.

A view of what is happening in the private sector is also instructive. In preparing for today's presentation, I called some of the major law firms in San Francisco to see what their situation was. Most of them carry a group life insurance policy on their partners of $500,000 per partner. They also provide the spouse will receive decedent's vested share in the firm. They also make maximum use of the Keogh plans and also supplement with their own coverage.

Furthermore, while attributable to the partners' higher earning power more than any other single factor, survivors of these partners in private practice, will receive two to three times the annuities received by survivors of Federal judges, even under the much improved program we are discussing today.

While the bills before you will not solve all the problems, they go a long way in that direction. And I commend the authors as well as Chief Justice Warren Burger and Judge Frank Coffin for their individual and collective efforts to right this wrong, to remedy this disgraceful situation.

Gentlemen, in so far as sitting judges are concerned, this is the most important legislation to come before Congress in many, many years. It looks to the future not to the past. It will remove one stumbling block to the recruitment of candidates for judicial office

and will remove one incentive for sitting judges to abandon judicial service and return to the private sector. And it will ease the concerns of many as to how their survivors will fare after they are gone.

In short, it will be a positive step in our efforts to attract and retain the best qualified men and women for judicial service, and thereby enhance the quality of justice available to people of the United States.

Thank you. If you have questions, I will be happy to try to answer.

[Judge Williams' submissions for the record follow:]

PREPARED STATEMENT OF JUDGE SPENCER WILLIAMS

MY NAME IS SPENCER WILLIAMS. I AM A UNITED STATES DISTRICT JUDGE FROM SAN FRANCISCO AND APPEAR BEFORE YOU TODAY ON BEHALF OF THE FEDERAL JUDGES ASSOCIATION, OF WHICH I AM PRESIDENT.

THE MEMBERS OF THE FEDERAL JUDGES ASSOCIATION ARE PLEASED AND GRATEFUL THAT THIS COMMITTEE HAS REQUESTED AN EXPRESSION OF THEIR VIEWS ON H.R.3750 AND S.1392.

THE FEDERAL JUDGES ASSOCIATION WAS ORGANIZED AND INCORPORATED IN 1982. IT CONSISTS OF ALMOST 500 ACTIVE AND SENIOR ARTICLE III JUDGES FROM THE VARIOUS DISTRICT, CIRCUIT AND SPECIAL COURTS IN THE FEDERAL JUDICIARY. WE CURRENTLY REPRESENT OVER HALF OF THE MEMBERS OF THE FEDERAL JUDICIARY. THE ASSOCIATION IS A "GRASS-ROOTS" ORGANIZATION, WHOSE STATED PURPOSE IS TO SEEK THE HIGHEST QUALITY OF JUSTICE FOR THE PEOPLE OF THE UNITED STATES. THE FJA'S CONSTITUTION DECLARES THAT PRESERVING AND PROTECTING THE ABILITY OF THE FEDERAL JUDICIARY TO ATTRACT AND RETAIN THE BEST QUALIFIED MEN AND WOMEN FOR JUDICIAL SERVICE IS CRITICAL TO ATTAINING THAT PURPOSE.

AND THAT IS WHY I AM HERE TODAY.

WE BELIEVE THAT PERSONS WHO ARE CONSIDERING EITHER JOINING, OR LEAVING, THE FEDERAL BENCH WILL WEIGH, AMONG OTHER THINGS, WHAT EFFECT THEIR DECISION WILL HAVE ON THE WELL-BEING OF THEIR SURVIVORS.

THE DECISION OF A CANDIDATE FOR JUDICIAL OFFICE TO SEEK OR ACCEPT A FEDERAL JUDGESHIP, AND THE DECISION OF AN INCUMBENT JUDGE TO STAY OR NOT TO STAY IN JUDICIAL OFFICE WHEN FACED WITH ATTRACTIVE OFFERS TO RETURN TO PRIVATE PRACTICE, TURN IN LARGE PART ON WHAT EACH MUST GIVE UP IN THE WAY OF INCOME OR OTHER BENEFITS, IN EXCHANGE FOR THE HONOR, THE PRIVILEGE, AND THE SATISFACTION OF SERVING HIS OR HER COUNTRY IN THIS MOST IMPORTANT OFFICE.

AN ADDITIONAL, AND EQUALLY COMPELLING QUESTION IS WHAT THAT CANDIDATE, OR INCUMBENT, WILL REQUIRE HIS OR HER SPOUSE AND CHILDREN TO GIVE UP SO THAT HE OR SHE MAY ACCEPT OR CONTINUE TO PERFORM JUDICIAL SERVICE.

THE PROGRAM PRESENTLY OFFERED THE SURVIVORS OF DECEASED FEDERAL JUDGES IS SO BAD AND INEQUITABLE THAT IT IS EMBARRASSING.

I DO NOT PLAN TO TAKE THE COMMITTEE'S TIME TO DETAIL THE WOEFUL INADEQUACIES OF THE PRESENT PROGRAM OR TO POINT OUT THE SUBSTANTIAL IMPROVEMENTS PROPOSED BY THE LEGISLATION BEING CONSIDERED TODAY. OTHER WITNESSES HAVE ALREADY DONE SO AND I KNOW YOU ARE FULLY FAMILIAR WITH ALL ASPECTS OF THIS PROBLEM.

BASICALLY, WHAT WE NEED IS A GUARANTEED MINIMUM, RESPECTABLE ALLOWANCE FOR THE SURVIVING SPOUSES AND MINOR CHILDREN OF DECEASED FEDERAL JUDGES REGARDLESS OF THAT JUDGE'S LENGTH OF JUDICIAL SERVICE.

IN PRIOR TESTIMONY BEFORE THIS COMMITTEE I SPOKE OF THE TRAGEDY OF TIBBY WEST AND THE AGONY THAT BEFELL HER WHEN HER FEDERAL JUDGE HUSBAND DIED AFTER ONLY SEVEN YEARS OF JUDICIAL SERVICE . . . OF TRYING TO SUPPORT HERSELF ON THE $308.00 A MONTH SHE RECEIVED UNDER THE EXISTING SURVIVORS PROGRAM, AND OF TRYING TO SUPPORT HER FOUR MINOR CHILDREN ON THE ADDITIONAL $142.00 ALLOWED THEM.

THIS IS DISGRACEFUL, AND DOES NOT COME CLOSE TO MATCHING WHAT IS OFFERED IN OTHER GOVERNMENTS, IN OTHER BRANCHES OF THIS GOVERNMENT, OR IN THE PRIVATE SECTOR.

IN MY OWN STATE OF CALIFORNIA MANY STATE JUDGES HAVE OFTEN BEEN OUTSTANDING CANDIDATES FOR THE FEDERAL JUDICIARY. IT IS NOT SURPRISING THAT THIS SOURCE HAS VERITABLY DRIED UP WHEN YOU COMPARE THE STATE PROGRAM FOR JUDICIAL SURVIVORS WITH OURS. UNDER OUR PROGRAM IT TAKES 18 MONTHS BEFORE A JUDGE IS QUALIFIED TO PARTICIPATE. IN THE STATE PROGRAM, JUDGES ARE COVERED AS SOON AS THEY ARE SWORN IN. UNDER OUR FEDERAL PROGRAM THE SURVIVORS BENEFITS ARE ACCRUED AT THE RATE OF 1-1/4% PER YEAR OF SERVICE. IN THE STATE PROGRAM THEY ARE GUARANTEED A MINIMUM OF 25% OF JUDICIAL SALARY FROM THE VERY BEGINNING. INCIDENTALLY, AS OF JULY 1ST OF THIS YEAR, JUDICIAL SALARIES FOR TRIAL JUDGES WILL BE $80,984.00, JUSTICES OF APPELLATE COURT $92,374.00, ASSOCIATE JUSTICES OF THE SUPREME COURT $98,952.00 AND THE CHIEF JUSTICE $103,713. THE FLOOR OF SURVIVORS BENEFITS FOR THOSE POSITIONS AMOUNTS TO $20,246, $23,093, $24,738 AND $25,927 RESPECTIVELY.

THE SURVIVORS OF FEDERAL JUDGES EARNING COMPARABLE SALARIES WOULD NOT RECEIVE BENEFITS AT THOSE LEVELS UNTIL AFTER 15 YEARS OF SERVICE! FURTHERMORE, UNDER THE STATE SYSTEM SURVIVORS WOULD RECEIVE 37-1/2% OF INCOME AFTER 20 YEARS WHILE FEDERAL SURVIVORS WOULD NOT RECEIVE THAT AMOUNT UNLESS THE JUDICIAL DECEDENT HAD SERVED 31 YEARS.

A COMPARISON WITH EXISTING CIVIL SERVICE AND CONGRESSIONAL SURVIVORS BENEFITS PROGRAMS ALSO SHOW THE CURRENT JUDICIAL SURVIVORS PROGRAM TO BE SERIOUSLY DEFICIENT.

FIRST OF ALL, CONGRESSIONAL AND CIVIL SERVICE SURVIVORS PROGRAMS HAVE A FLOOR WHILE THE JUDICIARY'S PROGRAM DOES NOT. A COMPARISON OF THOSE PROGRAMS PREPARED LAST MAY FOR FJA BY RUTH GORDON, ATTORNEY AT LAW,* DEMONSTRATES THAT THE GREATEST INEQUITIES OCCUR WHEN AN APPOINTEE SENATOR, OR FEDERAL EMPLOYEE DIES AT AN EARLY AGE WITH FEW YEARS OF FEDERAL SERVICE. A COPY OF THE REPORT IS ATTACHED FOR YOUR REFERENCE AND CONVENIENCE.

FOR EXAMPLE, IF A SENATOR AND A JUDGE ASSUME THEIR OFFICE AT 43 YEARS OF AGE AND DIE 18 MONTHS LATER, THE SPOUSE OF THE SENATOR WOULD RECEIVE APPROXIMATELY $12,907** PER YEAR AND A JUDGE'S SPOUSE WOULD RECEIVE LESS THAN $1,500 PER YEAR.

NEITHER IS ADEQUATE, BUT THE DISCREPANCY, DUE PRIMARILY TO THE ABSENCE OF A FLOOR IN THE JUDICIAL SURVIVORS PROGRAM, IS STARTLING.

THE REPORT POSES VARIOUS HYPOTHETICAL SITUATIONS AS TO AGE AND LENGTH OF SERVICE IN THE THREE BRANCHES AND MAKES COMPARISON OF THE BENEFITS. AND THEY COME MUCH CLOSER TOGETHER AS LENGTH OF SERVICE INCREASES.

BUT THE BOTTOM LINE IS THAT THE JUDICIAL SURVIVORS PROGRAM

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*MS. GORDON WORKED ON THIS REPORT UNDER THE SUPERVISION OF MR. TOM RAILSBACK (A FORMER MEMBER OF CONGRESS). WHILE WE HAVE NOT HAD THESE CONCLUSIONS AUDITED BY AN EXPERT IN THE FIELD, WE ARE IMPRESSED BY THE MANNER IN WHICH THE INFORMATION HAS BEEN PRESENTED AND ARE CONFIDENT THAT IT ACCURATELY STATES THE BENEFIT PICTURE FOR THE VARIOUS HYPOTHETICAL SITUATIONS DESCRIBED.

**SEE ATTACHMENT, PAGES 5 AND 6.

MUST BE AMENDED AND MUST BE GIVEN A FLOOR. AND THE BILLS BEFORE YOU TODAY DO JUST THAT.

THE GREAT BULK OF THE BENEFITS OF THESE BILLS WILL, OF COURSE, GO TO THE YOUNGER JUDGES, WHOSE SURVIVORS' BENEFITS WILL JUMP FROM 1-1/4 PER CENT OF SALARY AFTER 18 MONTHS, TO THE 30% FLOOR. THE JUDGE WHO HAS SERVED 20 YEARS, OR MORE, WILL RECEIVE COMPARATIVELY LITTLE IN RETURN FOR HIS INCREASED CONTRIBUTION. BUT THE OLDER JUDGES I REPRESENT WHOLEHEARTEDLY SUPPORT THE MEASURE BECAUSE THEY BELIEVE IT WILL HELP PRESERVE THE QUALITY OF THE FEDERAL BENCH BY MAKING IT EASIER FOR THE YOUNGER JUDGES, PARTICULARLY THOSE WITH MINOR CHILDREN, TO ACCEPT A FEDERAL JUDICIAL APPOINTMENT. AND THAT IS AN IMPORTANT POINT IN THE THINKING OF EVERY SITTING JUDGE WHO HAS DISCUSSED THIS MATTER WITH ME.

THE MOST NOTEWORTHY AND NECESSARY PROVISION, HOWEVER, IS THAT THERE WOULD BE A MINIMUM ALLOWANCE OF 30% OF AVERAGE HIGH THREE YEAR SALARY, OR $22,800 FOR THE SURVIVOR OF A DISTRICT JUDGE***. THE NEED FOR THIS FLOOR, TO PROTECT THE SURVIVORS OF JUDGES WHO DIE AT A RELATIVELY EARLY AGE, CANNOT BE OVEREMPHASIZED. THE PROGRAM WILL NOT PUT A SURVIVOR IN THE LAP OF LUXURY, BUT WE ARE NOT SEEKING LUXURY, ONLY EQUITY. A VIEW OF WHAT IS HAPPENING IN THE PRIVATE SECTOR IS ALSO INSTRUCTIVE.

IN PREPARING FOR TODAY'S PRESENTATION I CALLED SOME OF SAN FRANCISCO'S LARGER LAW FIRMS AND ASKED HOW THEY PROVIDED FOR THE SURVIVORS OF DECEASED PARTNERS. THE INFORMATION RECEIVED TO DATE IS INSUFFICIENT TO SUPPORT ANY SOLID CONCLUSIONS, BUT A PATTERN DOES SEEM TO EXIST:

- MOST OF THEM CARRY GROUP LIFE POLICIES ON THEIR PARTNERS. THESE ARE PAID FOR BY THE FIRM AND RUN AS HIGH AS $500,000 PER PARTNER.
- MOST PROVIDE THAT A SPOUSE WILL RECEIVE THE DECEDENT'S

***THE APPARENT DISCREPANCY BETWEEN THIS AMOUNT AND THE AMOUNT PAYABLE TO SURVIVING SPOUSES OF MEMBERS OF CONGRESS IS MODIFIED BY THE ADDITIONAL DEATH BENEFIT TO THE LATTER OF AN AMOUNT EQUAL TO ONE YEAR OF THE DECEDENT'S SALARY.

VESTED SHARE IN THE PARTNERSHIP (ACCOUNTS RECEIVABLE PLUS WORK IN PROGRESS).

- MOST TAKE MAXIMUM ADVANTAGE OF KEOGH PLANS.
- INDIVIDUALS OFTEN SUPPLEMENT THIS COVERAGE AT THEIR OWN EXPENSE.

FURTHERMORE, WHILE ATTRIBUTABLE TO THE PARTNERS' HIGHER EARNING POWER MORE THAN TO ANY OTHER SINGLE FACTOR, SURVIVORS OF THESE PARTNERS WILL RECEIVE TWO TO THREE TIMES THE ANNUITIES RECEIVED BY SURVIVORS OF FEDERAL JUDGES, EVEN UNDER THE GREATLY IMPROVED PLAN CONTAINED IN THE BILLS BEFORE US TODAY.

WHILE THE BILLS BEFORE YOU TODAY WOULD NOT SOLVE ALL THE PROBLEMS, IT GOES A LONG WAY IN THAT DIRECTION, AND I COMMEND THE AUTHORS, AS WELL AS CHIEF JUSTICE WARREN BURGER AND JUDGE FRANK COFFIN FOR THEIR INDIVIDUAL AND COLLECTIVE EFFORTS TO RIGHT THIS WRONG; TO REMEDY THIS DISGRACEFUL SITUATION.

GENTLEMEN, INSOFAR AS SITTING JUDGES ARE CONCERNED THIS IS THE MOST IMPORTANT LEGISLATION TO COME BEFORE CONGRESS IN MANY, MANY YEARS. IT LOOKS TO THE FUTURE NOT TO THE PAST. IT WILL REMOVE ONE STUMBLING BLOCK TO THE RECRUITMENT OF CANDIDATES FOR JUDICIAL OFFICE AND IT WILL REMOVE ONE INCENTIVE FOR SITTING JUDGES TO ABANDON JUDICIAL SERVICE AND RETURN TO THE PRIVATE SECTOR. AND IT WILL EASE CONCERNS OF MANY AS TO HOW THEIR SURVIVORS WILL FARE AFTER THEY ARE GONE.

IN SHORT, IT WILL BE A POSITIVE STEP IN OUR EFFORTS TO ATTRACT AND RETAIN THE BEST QUALIFIED MEN AND WOMEN FOR JUDICIAL SERVICE AND THEREBY ENHANCE THE QUALITY OF JUSTICE AVAILABLE TO OUR CITIZENS. THANK YOU.

IF YOU HAVE ANY QUESTIONS I WILL ENDEAVOR TO ANSWER THEM.

MEMORANDUM

DATE: May 22, 1985

RE: Comparison of Federal Civil Service, Congressional and Judicial Survivors Annuities Benefits

INTRODUCTION

The purpose of this memorandum is to demonstrate how survivors' benefits, calculated under the Civil Service, Congressional and Judicial Survivors Annuity Programs, compare when applied to various fact patterns. As the following examples illustrate, the greatest inequities occur when an appointee, member, or federal employee dies at an early age with few years of federal service. The Civil Service Program, which includes Congressional benefits, includes a minimum floor on survivors' benefits, thereby shielding the survivors of most employees or members that die at an early age from inadequate benefits. The Judicial Program, however, does not include a minimum floor provision. Consequently, if a federal Judge dies at an early age, the benefits accruing to his survivors are totally inadequate. For example, if a member or judge is appointed at age 47 and dies 18 months later at age 48, the spouse of a member of Congress would receive approximately $9,500 per year. A judge's spouse, on the other hand, would receive slightly less than $1,500 per year. Without the floor provision, however, the survivor of a member of Congress would receive less than $1,000. Therefore, enactment of a floor on judicial survivors' benefits would be only putting the program on par with the Congressional Program.

The average age of newly elected members of the House of Representatives in the 99th and 98th Congress was 43. The average age of newly elected members of the Senate in the 99th and 98th Congress was 44 and 47, respectively. The average age of judicial appointees from 1980 to 1984 was 50.5 years. The average age of members of the House and Senate is 50.5 while the average age of federal judges from 1980 to 1984 was 62. Furthermore, half of the members of the Senate have served for eight years or more and half of the members of the House have served for five years or more. Federal judges serve for an average of 20 years.

The examples used in this memorandum will focus on these statistics and on how the programs differ and harmonize with each other.

FORMULAS

The Judicial Survivors Annuities Program

The prescribed formula for calculating survivors' benefits under the Judicial Survivors Annuity Program is:

(high three year average) X (years of) X .0125 = (annuity)[1/]
(annual salary) (service) (amount)

Although the years of service employed in the following hypotheticals will include only judicial service, creditable service also may include other federal employment, such as serving as a member of Congress, a congressional aide, a U.S. Attorney, or military service. The present salary of U.S. District and Circuit Court Judges is $76,000 and $80,400, respectively. These figures will be used to determine the average high three year salary of judges. Each example will also assume that appropriate qualifying amounts have been paid into the Judicial Survivors' Annuity Fund and that judges otherwise meet all other requirements of the Act.

Retirement/Survivors Annuity Program for Members of Congress and Federal Employees

If a member of Congress has at least five years of service as a member or Congressional employee, his retirement annuity is calculated pursuant to the following formula:

2.5% X (high three year) (years of)[2/] = (retirement)[3/]
(average annual salary) X (service) (annuity)

If a member has less than five years of service, his retirement annuity is calculated pursuant to the Civil Service annuity formula:

(1) 1.5% of average pay multiplied by so much of total service that does not exceed 5 years; plus

(2) 1.75% of average pay multiplied by so much of total service exceeding 5 years but not exceeding 10 years, plus

(3) 2% of average pay multiplied by total service exceeding 10 years.[4/]

This formula is also used to calculate the floor on benefits to survivors of members of Congress, serving less than five years, and other federal employees.

1/ 28 U.S.C. § 376

2/ Although years of service may include other years of federal employment such as creditable military service and Congressional employee service, the calculations in this memo will assume the member has served only in Congress. Furthermore, it will be assumed that all other requirements of the Act, such as payments into the retirement fund, have been complied with.

3/ 5 U.S.C. §8339(c)

4/ 5 U.S.C. §8339(a)

The annuity accruing to the survivors of members of Congress and federal employees is 55% of the retirement annuity.[5/] The Civil Service/Congressional Program also contains a formula to calculate minimum survivors' annuities.[6/] Generally, survivors' annuities are 55% of the retirement annuity of the deceased. If a member or federal employee dies before reaching age 60, however, his survivor receives at least a guaranteed minimum annuity of 55% of the lessor of:

a) 40% of the member's average pay,

or

b) the sum obtained under the basic formula after increasing the length of service by the time between the date of death and the date the member would have reached age 60.

As the following hypotheticals illustrate, this provision accounts for the large difference in benefits payable to the survivors of federal employees (including members of Congress) versus federal judges, when they die at an early age with few years of service.

Members of Congress are currently paid $75,100 per year and the highest level Senior Executive Service salary is $72,300. These figures will be employed in the following hypotheticals.

Hypotheticals

Hypothetical No. 1

The average age of newly elected members of the House of Representatives in the 99th and 98th Congress was 43. This age will be used to illustrate the annuity accruing to the surviving spouse of a new member of Congress or judicial appointee, if he were to die suddenly after serving only 18 months.

Fact Pattern

Elected or appointed at age: 43
Die 18 months later at age: 44
Years of service: 18 months

Members of Congress

Salary: $75,100

Regular Annuity

75,100 x 1.5% = $1,126.50 x 1.5 years = $1,689.75
Retirement Annuity = $1,689.75

5/ 5 U.S.C. §8341(b)(1)

6/ 5 U.S.C. §8341(d)

Survivors' benefits:
55% of retirement annuity ($1,689.75) = $929.36 or $74.45 per month

Floor Amount

Regular annuity ($929.36)

or

55% of the lesser of:

a) 40% of average high 3 year salary = $30,040
or
b) Regular retirement annuity projected to the time the member would have reached 60:

60-44 years = 16 years
+ 1 1/2 years served = 1.5 years
Total 17.5 years

75,100 x 1.5% = $1,126.50 x 5 years = $5,632.50

75,100 x 1.75% = $1,314.25 x 5 years = $6,571.25

75,100 x 2% = $1,502.00 x 7.5 years = $11,265.00

Total $23,468.75

Lesser of:

a) 30,040 x 55% = $16,522 = $1,376.83 per month

or

* b) 23,468.75 x 55% = $12,907.81 = $1,075.65 per month

The survivors annuity would be $12,907.81 per year or $1,075.65 per month, because this amount exceeds the amount ($929.36 or $74.45 per month) calculated under the regular formula.

Civil Servants

Salary: $72,300

Regular Annuity

72,300 x 1.5% = $1,084.50 x 1.5 years of service = $1,626.75
Retirement Annuity = $1,626.75

Survivors' Benefits:
55% of retirement annuity ($1,626.75) = $894.71 or $74.55 per month

Floor Amount

Regular annuity ($894.71)

or

55% of the lesser of:

a) 40% of average high 3 year salary = $28,920
or
b) Regular retirement annuity projected to the time the employee would have reached 60:

60-44 years - 16 years
+ 1 1/2 years served = 1.5 years
Total 17.5 years

72,300 x 1.5% = $1,084.50 x 5 years = $5,422.50

72,300 x 1.75% = $1,265.25 x 5 years = $6,326.25

72,300 x 2% = $1,446.00 x 7.5 years = $10,845.00

Total $22,593.75

Lesser of:

a) 28,920 x 55% = $15,906.00 = $1,325.50 per month

or

b) 22,593.75 x 55% = $12,426.56 = $1,035.55 per month

The survivors' annuity would be $12,426.56 per year ($1,035.55 per month), because this amount exceeds the amount ($894.91 per year or $74.55 per month) calculated under the regular formula.

Federal Judges

District Court

Salary: $76,000

76,000 x 1.25% = $950 x 1.5 years of service = $1,425

Annuity = $1,425 or $118.75 per month

Circuit Court

Salary: $80,400

80,400 x 1.25% = $1,005 x 1.5 years of service = $1,507.50

Annuity = 1,507.50 or $125.63 per month

Thus in hypothetical number one, where the subject dies at the age of 44 with 18 months of creditable service, his survivor would receive the following annuities:

Members of Congress: $12,907.81 per year or $1,075.65 per month

Executive Level Civil Service: $12,426.56 per year or $1,035.55 per month

Judges:

District: $1,425 per year or $118.75 per month
Circuit: $1,507.50 per year or $125.63 per month

The unequal and totally inadequate compensation for the survivors of federal judges who die at an early age is readily apparent from these figures. The survivors of members of Congress receive almost ten times more than the survivors of federal judges. The figures calculated under the regular Civil Service and Congressional survivors' annuity formula are comparable to those calculated under the Judicial Program. Therefore, the floor on benefits, mandated in the Civil Service Program, accounts totally for the disparity in benefits. This clear inequity strengthens the case for including a floor in the Judicial Program.

Hypothetical No. 2

The average age of new Members of the Senate was 44 in the 99th Congress and 47 in the 98th. Since the difference between age 43, as illustrated in the first hypothetical, and age 44 is diminutive for our purposes, this example will focus on members who are elected at age 47 and die 18 months later. Thus, this hypothetical will be based on the following figures:

Fact Pattern

Elected or appointed at age: 47
Die 18 months later at age: 48
Years of service: 18 months

Members of Congress

Salary: $75,100

Regular Annuity

75,100 x 1.5% = $1,126.50 x 1.5 years of service = $1,689.75
Retirement annuity = $1,689.75

Survivors' Benefits:
55% of $1,689.75 = $929.36 or $77.45 per month

Floor Amount

Regular annuity ($929.36)

or

55% of the lesser of:

a) 40% of average 3 years salary = $30,040
or
b) Regular retirement annuity projected to time would have reached age 60.

60-48 years	=	12 years
+ 1 1/2 years served	=	1.5 years
	Total	13.5 years

75,100 x 1.5% = $1,126.50 x 5 years = $5,632.50

75,100 x 1.75% = $1,314.25 x 5 years = $6,571.25

75,100 x 2% = $1,502.00 x 3.5 years = $5,257.00

Total $17,460.75

Lesser of:

a) 30,040 x 55% = $16,522 = $1,376.83 per month

or

b) 17,460.75 x 55% = $9,603.41 = $800.28 per month

The survivors' annuity would be $800.28 per month.

Civil Servants

Salary: $72,300

Regular Annuity

72,300 x 1.5% = $1,084.50 x 1.5 years of service = $1,626.75
Retirement Annuity = $1,626.75

Survivors' Benefits:
55% of retirement annuity ($1,626.75) = $894.71 or $74.55 per month

Floor Amount

Regular Annuity Amount ($894.71)

or

55% of the lessor of:

a) 40% of average 3 year salary = $28,920
or
b) Regular retirement annuity projected to the time would have reached age 60.

60-48 years = 12 years
1 1/2 years served = 1.5 years
Total 13.5 years

72,300 x 1.5% = $1,084.50 x 5 years = $5,422.50

72,300 x 1.75% = $1,265.25 x 5 years = $6,326.25

72,300 x 2% = $1,446.00 x 3.5 years = $5,061.00

Total $16,809.75

Lesser of:

a) 28,920.00 x 55% = $15,906.00 = $1,325.50 per month

or

b) 16,809.75 x 55% = $9,245.23 = $770.44 per month

The survivor's annuity would be $9,245.23 per year or $770.44 per month.

In the case of District and Circuit Court judges, the survivors' annuities would be identical to the amounts calculated in hypothetical No. 1 because formula does not take age into account. Thus, if a 48 year old appointee or member dies with 18 months of creditable service, his survivor would receive:

Members of Congress: $9,603.41 per year or $800.28 per month

Executive level
Civil Service: $9,245.23 per year or $770.44 per month

Federal Judges:

District Court: $1,425 per year or $118 per month
Circuit Court $1,507.50 per year or $125.63 per month

Again, the glaring disparities are apparent.

Hypothetical No. 3

Fact Pattern

Elected or appointed at age: 50
Die 5 years later at age: 55
Years of Service: 5 years

Salary: $75,100

Regular Annuity

75,100 x 2.5% = $1,877.50 x 5 years of service = $9,387.50
Retirement Annuity = $9,387.50

Survivors' Benefits:
55% of retirement annuity ($9,387.50) = $5,163.13 or $430.26 per month

Floor Amount

Regular annuity ($5,163.13)

or

55% of the lesser of:

a) 40% of average high three year salary = $30,040
or
b) Regular retirement annuity projected to the time the employee would have reached age 60.

60-55 years = 5 years
+ 5 years served = 5 years
Total 10 years

75,100 x 2.5% = $1,877.50 x 10 years = $18,775.00

a) 30,040 x 55% = $16,522 = $1,376.83 per month

or

b) 18,775.00 x 55% = $10,326.25 or $860.52 per month

Since the amount calculated under the floor amount formula exceeds the regular annuity of $5,163.13 ($430.26 per month), the annuitant would receive the floor amount of $10,326.25 per year or $860.52 per month.

Civil Servants

Salary: $72,300

Regular Annuity

72,300 x 1.5% = $1,084.50 x 5 years of service = $5,422.50
Retirement Annuity = $5,422.50

Survivors' Benefits:
55% of retirement annuity ($5,422.50) = $2,982.38 or $248.53 per month

Floor Amount

Regular annuity ($2,982.38)

or

55% of the lesser of:

a) 40% of average high 3 year salary = $28,920
or
b) Regular retirement annuity projected to time employee would have reach 60.

60-55 years = 5 years
+ 5 years served = 5 years
Total = 10 years

72,300 x 1.5% = $1,084.50 x 5 = $5,422.50

72,300 x 1.75% = $1,265.25 x 5 = $6,326.25
Total $11,748.75

Lesser of:

a) 28,920 x 55% = $15,906 = $1,325.50 per month

or

* b) 11,748.75 x 55% = $6,461.82 = $538.48 per month

Since the annuity calculated under the floor formula yields a higher annuity, the survivor would receive $6,140.06 a year or $511.67 per month.

Judges

District Court

Salary: $76,000

76,000 x 1.25% = $950 x 5 years of service = $4,750

The survivors annuity is $4,750 per year or $395.83 per month.

Circuit Court

Salary: $80,400 per year

80,400 X 1.25% = $1,005 x 5 years of service = $5,025

The survivors annuity is $5,025 per year or $418 per month.

Thus, in case number 3, where the subject dies at age 55 with 5 years of service, survivors receive the following annuities:

Members of Congress: $10,326.25 per year or $860.52 per month

Executive Level
Civil Servants: $6,461.82 per year or $538.48 per month

Judges

District: $4,750 per year or $395.83 per month
Circuit: $5,025 per year or $418 per month

After five years of service, the survivors of Members of Congress and federal employees still receive much higher annuities than the survivors of Federal Judges. In this case, the disparties are narrower; the survivor of a Congressman would receive more than twice as much as the survivor of a federal judge rather than almost ten times as much. Given the ability of members of Congress to obtain outside income and their wider discretion to engage in outside income ventures and investments, it is untenable for the survivors of Federal Judges who are likely to have less income at their disposal, to be receiving fewer benefits. It is even more objectionable for them to be receiving less than half as much as the survivors of members of Congress, per year.

Hypothetical No. 4

Fact Pattern

Elected or appointed at age: 45
Die 10 years later at age: 55
Years of service: 10 years

Member of Congress

Salary: $75,100

Regular Annuity

75,100 x 2.5% = $1,877.50 x 10 years = $18,775.00
Retirement Annuity = $18,775.00

Survivors' Benefits:
55% of retirement annuity ($18,775.00) = $10,326.25 or $860.52 per month

Floor Amount

Regular annuity ($10,326.25)

or

55% of the lesser of:

a) 40% of the average high three year salary = $30,040

or

b) Regular retirement annuity projected to the time the member would have reached 60:

60-55 years	=	5 years
+ 10 years served	=	10 years
Total		15 years

75,100 x 2.5% = $1,877.50 x 15 years = $28,162.50

Lesser of:

a) 30,040 x 55% = $16,522 = $1,376.83 per month

or

b) 28,162.50 x 55% = $15,489.38 = $1,290.78 per month

The survivors' annuity would be $15,489.38 per year or $1,290.78 per month because this amount exceeds the amount calculated under the regular formula.

Civil Servants

Salary: $72,300

Regular Annuity

72,300 x 1.5% = $1,084.50	x	5 years	= $5,422.50
72,300 x 1.75% = $1,265.25	x	5 years	= $6,326.25
		Total	$11,748.75

Retirement Annuity = $11,748.75

Survivors' Benefits:
55% of retirement annuity ($11,748.75) = $6,461.81 or $538.48 per month

Floor Amount

Regular annuity ($6,461.81)

or

55% of the lessor of:

a) 40% of the average high three year salary = $28,920

or

b) Regular retirement annuity projected to the time the employee would have reached 60:

60-55 years = 5 years
10 years served = 10 years
Total 15 years

72,300 x 1.5% = $1,084.50 x 5 years = $5,422.50

72,300 x 1.75% = $1,265.25 x 5 years = $6,326.25

72,300 x 2% = $1,446.00 x 5 years = $7,230.00

Total $18,978.75

Lesser of:

a) 28,920 x 55% = $15,906.00 = $1,325.50 per month

or

b) 18,978.75 x 55% = $10,438.31 or $869.86 per month

The survivors annuity would be $10,438.31 per year or $869.86 per month because this amount exceeds the amount calculated under the regular formula.

Federal Judges

District Court

Salary: $76,000

76,000 x 1.25% = $950 X 10 years of service = $9,500

Annuity = $9,500 or $791.67 per month

Circuit Court

Salary: $80,400

80,400 x 1.25% = $1,005 x 10 years of service = $10,050 or $837.50 per month

Annuity = $10,050 or $837.50 per month

Thus in hypothetical number four, where the appointee or member dies at age 55 with 10

years of creditable service, his survivor would receive the following:

Members of Congress: $15,489.38 per year or $1,290.78 per month

Executive Level
Civil Servants: $10,438.31 per year or $869.86 per month

Judges

District: $9,500 or $791.67 per month
Circuit: $10,050 or $837.50 per month

Hypothetical No. 5

Fact Pattern

Elected or appointed at age: 45
Dies 20 years later at age: 65
Years of service: 20 years

Members of Congress

Salary: $75,100

Regular Annuity

75,100 x 2.5% = $1,877.50 x 20 years = $37,550
Retirement annuity = $37,550

Survivors' Benefits:
55% of retirement annuity ($37,550) = $20,652.50 or $1,721.04 per month

Since the member expires at age 65, the floor formula is inapplicable.

Civil Servants

Salary: $72,300

Regular Annuity

72,300 x 1.5% = $1,084.50 x 5 years = $5,422.50

72,300 x 1.75% = $1,265.25 x 5 years = $6,326.50

72,300 x 2% = $1,446.00 x 10 years = $14,460.00
Total $26,209.00

Retirement Annuity = $26,209

Survivors' Benefits:
55% of retirement annuity ($26,209) = $14,414.95 or $1,201.24 per month

Federal Judges

District Court

Salary: $76,100

76,100 x 1.25% = $950 x 20 years of service = $19,000 or $1,583.33 per month

Annuity = $19,000 or $1,583.33 per month

Circuit Court

Salary: $80,400

80,400 x 1.25% = $1,005 x 20 years of service = $20,100 or $1,675.00 per month

Annuity = $20,100 or $1,675.00 per month

Thus in hypothetical number five, where the subject dies at age of 65 with 20 years of creditable service, his survivor would receive:

Member of Congress: $20,652.50 or $1,721.04 per month

Executive Level
Civil Service: $14,414.95 or $1,201.24 per month

Judges

District: $19,000 per year or $1,583.33 per month
Circuit: $20,100 per year or $1,675.00 per month

Hypotheticals four and five illustrate that the formulas begin to approach parity only when the member or appointee begins to approach retirement age. Before that time, the floor formula insures that the benefits accruing to the survivors of members of Congress will always far outdistance benefits payable to the survivors' of federal judges.

Proposed Amendments

Amendments to the Judicial Survivors Annuity Program, proposed by Congressman Kastenmeier, would alter the program in fundamental ways. Judges would contribute an additional .5% of their salaries to the fund and the formula would substitute a factor of 1.5% for the 1.25% of average salary currently contained in the law. Furthermore, there would be a floor of 30% of average high three year judicial salaries. on all annuities.

At current salary levels, a 30% floor would yield annuities of $22,800 and $24,120, respectively, for the spouses of District and Circuit Judges. These amounts are equivalent to serving 24 years, under the present formula. A 20% floor would yield annuities of $15,200 for the survivors of District Judges and $16,080 for the survivors of Circuit Judges. These amounts are equivalent to serving 16 years, under the present formula. A floor of 25%, would yield an annuity of $19,000 for the survivors of District Judges and $20,100 for the survivors of Circuit Judges. These amounts would be equivalent to 20 years of service.

The annuity generated pursuant to a 30% floor substantially exceeds the floor amounts in the Congressional and Civil Service Programs. The maximum amount under the Congressional/Civil Service floor formula is 55% of 40% of average three year high salaries. Thus, for members of Congress the maximum floor amount is $16, 522 per year or $1,376.83 per month and for top executive level civil servants $15,906.00 per year or $1,325.50 per month. The 20% floor yields amounts comparable to the Civil Service/Congressional scheme. The 25% floor, however, does not substantially exceed the Congressional Program and may be necessary given the potentially more acute needs of their survivors due to the limits on outside income and investments imposed on Federal Judges.

Substituting 1.5% for 1.25% also favorably changes the formula. For instance, in hypothetical number three where an appointee to the Court of Appeals serves for 5 years, the survivors' benefits would be:

$80,400 X 1.50% = $1,206 X 5 years of service = $6,030

Under the present formula the annuitant would receive only $5,025 per year. This change does not substantially alter the situation of the survivor of an appointee who dies after 18 months in office. In that case the annuity is calculated as follows:

80,400 X 1.50% = $1,260.00 X 1.5 years = $1,890 per year

This annuity does not differ markedly from the annuity available under the

present program, which is $1,425 per year. Thus increasing the percentage to 1.5% does not obviate the need for minimum benefits; it will insure, however, somewhat higher benefits for all annuitants.

Childrens' Benefits

Benefits for the children of federal employees or members who die after completing at least 18 months of service are computed pursuant to the following formula:

If the member is survived by a spouse, each surviving child is entitled to an annuity equal to the smallest of:

a) 60% of the average pay of the employee or member divided by the number of children;

b) $900; or

c) $2,700 divided by the number of children.

If the employee or member is not survived by a spouse, each surviving child is entitled to an annuity equal to the smallest of:

a) 75% of the average pay of the employee or member divided by the number of children;

b) $1,080; or

c) $3,240 divided by the number of children.

Benefits for the children of judges who die with minor children are actually more generous than those under the Congressional/Civil Service Program and are calculated pursuant to the following formula:

If the judge is survived by a spouse each child receives an annuity equal to:

a) $1,548; or

b) $4,644 divided by the number of children whichever is smallest.

If the judge leaves no surviving spouse each child receives:

a) $1,860; or

b) $5,580 divided by the number of children whichever is smallest.

The Kastenmeier bill would amend the Judicial Program to provide much more generous benefits for surviving children. Such children would receive benefits based on the following formula:

If the judge is survived by a spouse, surviving children would receive the smaller of:

a) 10% of nigh average three year salary

or

b) 20% of high average three year salary divided by the number of children.

If the judge leaves no surviving spouse, surviving children would receive:

a) 20% of high average three year salary

or

b) 40% of high average three year salary divided by the number of children.

Ten percent of the current salary of District Judges is $7,600 and 20% is $15,200. Thus, if a judge expires leaving a spouse and 2 children, each child would receive $7,600 per year or $633.33 per month. If the judge leaves three children, each child would receive $5,066 or $422.16 per month. If the judge died, leaving no surviving spouse and two surviving children each child would receive $15,200 or $1,266 per month. If the judge was survived only by three children each child would receive $10,133 each or $844.44 per month.

If a member of Congress died and was survived by a spouse and two children, each child would received $900 per year or $75.00 per month. If the member was survived by 3 children, each child would still receive $900 per year. If the member was not survived by a spouse, 2 children would received $1,080 each per year, and 3 children would also each receive $1,080 per year.

Presently the the floor on benefits in the Civil Service/Congressional Program more than compensate for the slightly higher benefit to the surviving children of federal judges. Under the entire package of amendments to the Judicial Survivors Annuity Program, however, the benefits payable to the surviving children of judges would far outpace those payable to the surviving children of members of Congress. As of March 1, 1985, there were only ten children receiving benefits under the judicial program. Thus the cost of this program, even with more generous benefits, will be minimal and the need is very likely to be more acute.

Senator EAST. Thank you, Judge Williams.

If it is satisfactory to you, Senator Heflin, we will ask all three gentlemen to comment, and then we will proceed to ask questions after that.

Judge Coffin.

STATEMENT OF FRANK M. COFFIN

Judge COFFIN. Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you today. I feel honored to be between my good friends and fellow judges, Spencer Williams and Bill Hungate, representing the American Bar Association, division of trial judges.

In the audience, I should mention, we have some more than remotely interested observers. We have three spouses of judges, Mrs. Mikva, Mrs. Starr, and Mrs. Bork, who do not plan presently to be surviving spouses, but nevertheless, they are carrying the ball for their sisters all over the country and have done a great deal of work on this legislation.

I am going to try not to overlap too much what my brethren will be saying or with what the committee has already said.

Senator Heflin painted a very accurate picture of the diminution in the present judicial survivors program where less than 25 percent of the new judges feel that it is worthwhile for them to invest. It is sort of a failure to redeem the early promise made in 1956 and then again in 1976, redeem the promise that was made to the judiciary to provide some way in which they could provide in turn for their survivors.

Senator Heflin has mentioned the large problem of underfunding if there isn't a satisfactory participation. And I would also second what Judge Williams has said, that it is simply another source of discouragement for new judicial candidates who realize that they must not only take, in most cases, quite a lessening in the amount of their compensation but must go out and buy insurance or a substitute for the judicial survivors program.

There are three big changes in the bills before you. One has to do with children. And just touching the high spots, I think the chairman has mentioned that the present allowance for a child with a spouse of the judge also surviving is $1,548 a year or $129 a month, to support that child. If no spouse is living, just the child, then that child receives $1,860 or the small sum of $155 a month.

So this legislation will increase it with its formulas. If there is no spouse annuity, just children surviving, then the child receives 20 percent of the 3-year salary average or 40 percent divided by the number of children. Well, this translates into about $1,500 a month. If the spouse is living, if the mother or father of that child is living, then the amount per child will decrease to about $7,800 a year. So the children's part in this is very important.

I would say in passing that I think the child's allowance for Members of Congress is very low. There are other advantages in your program. But I think the amount per child, I think it is a maximum of $900 a year, is certainly inadequate.

I should point out that we are not talking about a great drawdown on our program or in the fund. In the last 30 years of this

practice, I am told that payments have been made to 29 children. And at the present time as of last March, 10 children are receiving payments from this program. So it is not a macro, it is not a big program; but where it is needed, it is absolutely vital.

Now, Judge Williams has eloquently talked about the second major change, which is the need for a floor. I will not repeat what he said except to call your attention and that of the staff to the memorandum that is on file with your committee now, both as a supplement to Judge Williams' remarks and it is also included in my own submission on behalf of the Judicial Conference.

But the analysis done in Congressman Railsback's office at pages 7, 10, 16, and 17 dramatically demonstrates the disparity between the judicial situation and the congressional situation for those judges who die at a fairly early age. Only when a judge or member reaches the age of 55 with 10 years' service, or age 65 and 20 years' service, do the two programs begin to come together.

I would add this note, too. We are talking about a floor. But again, we are not talking about a huge program. We have as of the spring, I think, 208 spouses, mostly widows, on our program, averaging payment of only $14,000 a year. That means that the judges lived approximately—or had about 15 years of service. So it is not again a tremendous number of people, but it is vital where it exists. And the floor is perhaps the single most important part of this legislation.

The third major change is to increase the ceiling to 55 percent of salary. What that means is that judges who serve beyond 30 years and serve up to 36 years will be credited for their payments. This will not happen very often. I've served 20 years. I doubt if I will live long enough to serve 36, but I would like to have the feeling that if living and serving, I could be credited for that time.

Again, the money value is not very much. The legislation is increasing the multiplying factor from 1.25 percent of salary to 1.5. And then we have a 30 percent of salary floor.

Well, those are the three big changes. I'll just touch slightly on several other ones. On behalf of the Government there would be a contribution of 8.15 percent; on behalf of judges there will be a contribution of 5 percent rather than 4.5 percent. To insure the integrity of the fund, there would be an annual audit, which by law the Administrative Office of U.S. Courts has to perform. So the health or lack of health of the fund and its capacity to meet unfunded liabilities is known and can be corrected each year. And that correction may involve, if there has been good management and the fund has had a happy time, a surplus, which would be of course kept in the fund to take care of future shortfalls.

If there is a shortfall, then the committee may take such action as it sees fit, either to increase the governmental contribution or to increase the judicial contribution.

Another change is that a spouse or widow does not forfeit her annuity if she remarries after reaching the age of 55. I personally don't see why there is any age requirement, but it used to be 65, then it went down to 60, and civil service in general has gone down to 55. So we would be taking that step.

Also provisions made for divorced spouses, realizing that there are obligations there that should not be overlooked. And already I think Senator Heflin has mentioned the open season.

Just a few other comments before I close, Mr. Chairman. Senator Thurmond asked us for information long, long ago—too long ago—but we now have provided all of it. Earlier we had provided only part of it. One question would be that of costs. And the Budget Office, Congressional Budget Office, estimates that the annual cost to Government will be $1.9 million, which might by fiscal 1990 rise to $2.3 million.

This we think, even in the light of Gramm-Rudman, is a very small amount to rectify this injustice.

He also asked what would happen if judges and Government contributed 50/50, as they have in the past? Well, this legislation proposes an increase for judges from 4.5 to 5 percent. And that is an 11-percent increase in what would be demanded from judges. And to have an equal contribution at 6.58 percent, which is what it would be, would increase the contribution 46 percent. And I just feel that we would be back in the same position we are now with judges not participating in the program at that rate.

The question was also asked, What are the comparisons between civil service retirement and judicial survivors annuity? In our long statement we have set forth tables of comparisons.

But it is like comparing an apple and a mango because you Members, what you are buying with your annuity, is primarily retirement. And you come to this Chamber and also particularly to the other body, come, say, in your early forties, and half of the Members are perhaps under 5 years of service in the House, under 8 years in the Senate. And that means that longevity as a Member, I do not know what the average is, but it would seem to me that 10 years would be a pretty fair statement.

Whereas the judge is older when he or she comes to office. Even though there are younger judges now, the average for 20 years has been 50 years for a new judicial appointee. And the average service expected or realized is about 20 years. So while the judge has his retirement, because our system gives him full salary, what he does not have is provision for his survivors. And that is what this legislation does.

On the other hand, of vast importance to Members of Congress is retirement. And then after that, after they receive retirement annuities for a considerable period of time, then the survivors' annuities would kick in. But I think the tables indicate, and Mr. Railsback's statement would indicate also, that the two systems, though quite different, are nevertheless in a general position of harmony.

The final question is, What is the effect of Social Security? And again, we have some data which indicates that in the short run for senior judges our expert said that Social Security might give senior judges some $200 to $500 a month, which translates to $2,400 a year to $6,000 a year. But even after the year 2000 when judges would have been covered full time by Social Security and get maximum benefits, even at most it would be not over $12,000 a year, which is—what is it? It is roughly poverty level.

And judges want the judicial survivors program to supplement whatever they get from Social Security. Because after all, they have paid for Social Security. It is not a gift to them.

That concludes my present remarks, Mr. Chairman. I shall be glad to try to answer questions later on.

[The following statement was submitted for the record:]

PREPARED STATEMENT

ON BEHALF OF THE

JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, I want to express my personal appreciation, and the gratitude of all federal judges, for this opportunity to address one of the most serious problems facing federal judges today. I became a judge of the United States Court of Appeals for the First Circuit in October of 1965, and served as Chief Judge of that court from August of 1972 until March of 1983. As a Court of Appeals Chief Judge I served as a member of the Judicial Conference of the United States for approximately a decade. I am here today as Chairman of the Conference's Committee on the Judicial Branch, a position I have held since 1983.

In my twenty years of judicial service I cannot remember an issue which has troubled my colleagues as individual human beings more than the progressive deterioration of their Judicial Survivors' Annuity Program in the past decade. In 1976, immediately after Congress approved the Senate-initiated legislation embodied in Section 376 of Title 28, United States Code, which authorizes the existing program, ninety percent of the judges serving were members of the program. In each of the past three years fewer than twenty-five percent of newly appointed judges have elected to join the program. As Representative Robert W. Kastenmeier noted on the House floor on December 16:

> ...recently appointed Federal judges are routinely concluding that the program is "a whistle which isn't worth the penny". At the very least inadequacies in the existing system have an effect on whether highly qualified individuals accept or reject a Presidential call to become a Federal judge or whether a sitting judge will stay on the bench or resign.

I can assure you that the need to reestablish the confidence our judges had in the program after you modernized it ten years ago is a truly compelling need; the current state of the program has, for at least the past five years, been a demoralizing influence throughout the federal judiciary.

The Judicial Conference fully supports those amendments to 28 U.S.C. § 376 which would be effected by the provisions of H.R. 3570, as passed by more than two-thirds of the House on December 16, 1985. See 131 CONG. REC. H11998-12002 (daily ed. Dec. 16, 1985). The reforms in the Judicial Survivors' Annuity Program authorized by those provisions were originally requested by the Conference in late 1981. We are grateful for the recognition accorded our concern by the 63 Members of the House who sponsored the originally introduced bill (H.R. 3081)—upon which the House Subcommittee on

Courts, Civil Liberties and the Administration of Justice held hearings last July—and by the fourteen members of that subcommittee who endorsed the reform provisions forwarded to the full House for consideration in December.

Before addressing the specific reforms contained in H.R. 3570 — and several specific areas of special concern to this subcommittee — I believe that I should provide a brief explanation of the existing program's origins and problems.

BACKGROUND

Created by Congress in 1956 (Act of Aug. 3, 1956, Pub. L. No. 84-973, 70 Stat. 1021), after six years of consideration in both the House and the Senate, the program embodied Congress' recognition of the need to make available to judges an **elective** arrangement for providing survivorship benefits for their spouses and children. Completely revised and reformed in 1976 (Act of Oct. 19, 1976, Pub. L. No. 94-554, 90 Stat. 2603), the program became, for all judges, an example of Congressional responsiveness to judicial apprehensions concerning their ability to provide a reasonable degree of material security for their families in an era of diminishing purchasing power and infrequent salary increases.

As a **special** program to provide **only** protection for survivors—not a program for retirement annuities which **incidentally** provides survivor coverage—the judges' program must be "commercially" attractive. In 1976, it was an attractive investment, and judges **elected** to participate in record numbers. They are no longer doing so, because their contributions simply no longer provide a competitively attractive return on investment dollars. Judges must invest their "survivor coverage dollars" with discerning care, because their life-time commitment to their offices realistically precludes them from pursuing large incomes forever. With their entry on duty as judges, their earnings expectations and opportunities are properly very limited. That consequence of their unique commitment to public service is not shared by other groups of governmental officers or employees. Former Secretaries in the Executive Branch Departments, former Senior Executive Service members—and former Senators and Congressmen—have reasonable expectations of highly remunerative work following their "tours" of public service; judges do not, precisely because their "tours" are almost always life-time obligations. While "outside earnings" are theoretically possible, few sources for such earnings exist. A judge **may** teach part time or author textbooks, but few of those serving today in courts with massive caseloads can afford the time necessary for teaching or "extracurricular" writing.

When Public Law No. 94-554, "The Judicial Survivors' Annuities Reform Act," was approved by the President on October 19, 1976, Congress believed that the new law would achieve three fundamental purposes:

> (1) placing the "program in an actuarially sound fiscal condition for the first time since its creation";
>
> (2) providing "more liberal eligibility standards and reasonable increases in existing annuity amounts, made necessary by increases in the cost of living since each existing annuity was commenced"; and
>
> (3) establishing "a method for providing future periodic increases in annuity amounts without endangering the fiscal integrity of the entire program."

See S. Rep. No. 94-799, 94th Cong., 2d Sess. (1976).

In 1976 Congress believed it had established a program which would be an attractive enough investment to insure participation by all judges "shopping for" survivors' annuities protection for their families. That belief was based upon the premise that annuities payable would be regularly and predictably adjusted to reflect inflation in direct correlation to the extent to which judicial salaries increased in response to inflation. One year before enactment of the 1976 reforms, Congress had passed legislation authorizing annual "comparability adjustments" in federal judicial salaries (The Executive Salary Cost-of-Living Adjustment Act of 1975, Act of Aug. 9, 1975, Pub. L. No. 94-82, title II, § 203, 89 Stat. 422).

When structuring provisions in the 1976 Reform Act, the Senate Judiciary Committee presumed that the regular annual impact of those salary increases would insure "future periodic increases in annuity amounts." See S. Rep. No. 94-799, supra, at 46 and 55-56. The basic presumption was that, as judicial salaries were adjusted annually, survivors' annuities would also be annually increased. See 28 U.S.C. § 376(m).

That presumption — and the implicit promise — of annual adjustments in salaries, which would provide correlated adjustments in annuity benefit payments, did not, however, prove reliable. Commencing in the same year in which the reforms were enacted — in 1976 — annual "comparability adjustments" in judicial salaries — and in Congressional salaries as well — were routinely reduced or precluded by various legislative and executive actions taken in response to immediate economic or political perceptions and pressures. As a result, annuity payment amounts have not increased as anticipated. The purchasing power of the dollar has continued to diminish. The "investment attractiveness" of the program has been eroded, as commercially marketed alternatives, such as individual retirement accounts, have understandably appeared to judges to be "better buys for their dollars." Not surprisingly, participation in the program by new

judges entering on duty has dramatically diminished. As previously noted, in 1976, 90 percent of our judges were participants in the program; last year only 74 percent were participating. In 1978, 74 percent of "entering on duty" or newly appointed judges elected to participate; in each of the last three years, **fewer than 25 percent** of newly appointed judges have elected to participate.

In addition to the "diminution" in annuity amounts in relation to purchasing power of the dollar, and the resulting unattractiveness of the program as an investment — which could ultimately result in the bankruptcy of the program — our judges have also long been concerned about the prolonged period of years of service needed to achieve annuity amounts which are **realistically** adequate. Many judges believe that a minimum "floor annuity," and a more "accelerated" schedule of benefit amounts, are essential to making the program an attractive investment. Today the judges' program is the **only** governmental officer or employee program for survivors which does not have a minimum "floor annuity".

REFORMS EFFECTED BY PROVISIONS IN H.R. 3570

From our point of view, Section 2 of H.R. 3570 achieves three **major** reforms of tremendous value and six additional reforms which are desirable and equitable. **First,** the bill frees children's annuities from their currently "frozen" condition, a consequence of statutorily stipulated maximum dollar amounts which have no correlation to judicial salaries—the measure of the standard of living known to a judge's children immediately prior to their parent's death. **Second,** the bill authorizes a fair minimum "floor annuity" for surviving spouses. While few in number, those instances in which a judge dies at a relatively early age are precisely the instances in which the program's benefits are most desperately needed. If death occurs at an early age, however, years of service attained number few, and the annuity amount is therefore often thoroughly inadequate. In the most tragic and compelling cases, the benefits are the most insufficient. H.R. 3570 will correct that serious problem. **Third,** the bill revises the annuity computation formula to provide an "accelerated schedule" of benefit amounts. That reform is essential if the "investment attractiveness" of the program is to be restored. Only with that change will judges be able to perceive a meaningful enough return on their contribution dollars to warrant choosing the program over alternative investments.

In addition to those three **major** reforms, H.R. 3570 would also effect six additional, and worthwhile, changes in the judges' program. Judges would be required to contribute 5 percent, instead of 4.5 percent, of their salaries to the program. While the

one-half-of-one-percent increased "cost" might seem small, at current payable salary rates, district court judges would be contributing $3,935 each year, not an insignificant amount given the benefits available. H.R. 3570 would also revise the arrangement under which "government" contributions are made to the program, reflecting changes in other laws since 1976, enhancing annual administrative and Congressional controls, and eliminating the development of program fund deficits attributable to compounding consequences of a poor earnings experience in any one year. The bill would revise the program's current requirement that surviving spouses forfeit annuities upon "remarriage," and conform the program's marital criteria to other governmental programs; as revised, remarriage after attaining age 55 will no longer trigger a forfeiture of an annuity. The bill also would protect interests of divorced spouses to the same extent as other government programs; allow an "open season," during which judges not participating in the program could join it, and judges wishing to withdraw from it could do so; and permit a Deputy Director of the Administrative Office to join the program.

Those three major reforms, and the six additional improvements in the program, can perhaps be best understood if examined in three categories: (1) amendments reforming annuity amounts; (2) amendments strengthening the program's fiscal integrity and stability; and (3) amendments adjusting eligibility standards for participation in the program by both judges and survivors.

Amendments to Reform Annuity Amounts

Four proposed amendments would yield larger annuity amounts. One will increase annuities paid to surviving children; the other three will increase annuity amounts received by surviving spouses.

Surviving Children's Annuities

At present, under subsection (h)(1) of 28 U.S.C. § 376, annuities are authorized for surviving children in two "classes", and annuity amounts are determined by statutorily designated dollar figures. If the judge's spouse is receiving a survivor's annuity under the program, each child shall receive an annuity of $1,548 or $4,644 divided by the number of children, whichever is smallest. If the judge's spouse is not receiving an annuity under the program, each child shall receive: (1) an annuity of $1,860 or (2) $5,580 divided by the number of children, or (3) the amount which a surviving spouse would have received divided by the number of children, whichever amount is smallest. If there are more than three children who survive a judge in the first class, each will receive less than $129.00 each month; if there are more than three in the second class, each will receive less than

$155.00 each month. Two basic faults are in need of correction. **First,** statutorily fixed amounts become increasingly inadequate as time passes; and, **second,** whatever "formula" is substituted for designated amounts should provide reasonable adjustments in annuity amounts in relation to changing economic conditions.

The amendments contained in H.R. 3570 will (1) eliminate statutorily designated amounts by substituting a "formula," consisting of a stipulated percentage of the "high-three-year average annual salary" figure (which is used as the basis for computation of spousal annuities), and (2) set that percentage high enough to insure a reasonable annuity amount.

For children in the first "class" — cases in which a surviving spouse is receiving an annuity — each child would receive either an annuity equal to 10 percent of the high-three-year figure or an amount equal to 20 percent of that figure divided by the number of children, whichever is smaller. When today's salaries have been paid for three years, the 10 percent figure would provide $656 per month for children of district judges and $693 per month for those of circuit judges.

For children in the second "class" — cases in which a surviving spouse is not receiving an annuity — each child would receive an annuity equivalent to 20 percent of the high-three-year figure, or an amount equal to 40 percent of that figure divided by the number of children, or the amount which a surviving spouse would have received divided by the number of children, whichever is smaller. When today's salaries have been paid for three years, the 20 percent figure would provide $1,312 per month for children of district judges and $1,387 per month for those of circuit judges.

Any of us in governmental service today understands that providing ten percent of our salaries as a supplemental amount to assist a surviving spouse in caring for dependent children—or twenty percent of our salaries to sustain an orphaned child—is not an overly generous level of support for the child. Present annuity amounts for surviving children are a cruel joke. This proposed reform is essential. Since the program's creation in 1956, only 29 children have received annuities, in several cases for only a few years. Amounts expended from the program fund for children's annuities have never been significant in terms of the program's fiscal stability; they have, however, too often been notoriously inadequate in terms of the children's basic support.

Surviving Spousal Annuities

At present under subsection (1) of 28 U.S.C. § 376, a surviving spouse's annuity is usually a direct product of the following formula:

(high three-year average annual salary) x (years of service) x .0125 = (annuity amount)

Senate Rep. No. 94-799 presents a full explanation of the application of that formula, and the manner in which different types of creditable service are used in its application, at pages 32-34. Annuity amounts now available to surviving spouses using that formula are shown in Chart A, which is appended to this statement. If a district court judge dies today with the following numbers of years of service, his or her surviving spouse will receive the following amounts monthly:

Years of Service	Monthly Amount	Years of Service	Monthly Amount
1.5	$121.50	10	$ 790.92
3	237.25	20	1,581.92
5	395.42	30	2,372.83

In our economy today those amounts, especially in cases of premature deaths, do not go far.

While an annuity amount "ceiling" of 40 percent of the "average annual salary" figure is currently authorized under the program, a judge must serve **32 full years** before dying to insure a surviving spouse of that annuity amount. Very few judges serve for 32 full years, yet those who do so are required to continue contributing--even though their continuing contributions are purchasing no additional "coverage." Raising the "ceiling" would provide increased benefits in those few rare cases, and would not entail significant additional costs to the program.

As the monthly figures shown above demonstrate, in cases where death occurs with few years of service, annuities are paltry--yet those are the cases in which the survivor's needs are greatest. The current program has no "floor" annuity, and one is very much needed as a matter of equity.

1. **Increasing the "ceiling" for spousal annuities**

In 1976, when Congress last approved an "increase" in the JSAS program "ceiling," extending the percentage of salary limitation from 37.5 to 40 percent, that change was firmly predicated upon a direct correlation to the "ceiling" then impacting Members of Congress under the Civil Service Retirement program. See Sen. Rep. No. 94-799, supra, at 47-48. The effect of the 1976 reform was one-dimensional; simply stated, two more years of service became creditable for annuity computation purposes.

Increasing the ceiling percentage further -- if that is the **only** change made -- will still have exactly the same consequence; more years of service will be creditable. If the

ceiling is set at 55 percent, service through 44 years will become creditable under the program as it exists today. Realistically very few judges would ever be able to benefit from the change because few would serve the additional number of years. If the computation formula percentage factor is adjusted from the existing .0125 to .0150 (see discussion at item 3, infra.), however, retention of a 40 percent ceiling would result in the elimination of six years of service from creditability. H.R. 3570 therefore includes an amendment which would substitute a 55 percent ceiling for the existing 40 percent ceiling. With the 1.5 percent formula percentage factor reform effected by H.R. 3570, the 55 percent "ceiling" would be reached after 36 years of service. If a 50 percent "ceiling" is provided, it would be reached after 33 years of service. Not many judges will serve those numbers of years, yet any who do will be contributing to the program the entire time they are serving—and higher annuities made available will probably be paid for far fewer years.

2. Establishing a "floor" for spousal annuities

As noted above, the present program does not have a "floor" annuity amount. Many judges believe the establishment of one to be the most needed reform in the program. Given the problems associated with statutorily designated dollar amounts (increasing inadequacy as time passes and dependency upon legislative enactment for remedial action), the obviously preferred method for providing a floor is the same method used for setting a ceiling — a designated percentage of the average annual salary amount. The Judicial Conference recommends establishment of a 30 percent "floor," and H.R. 3570 would establish that floor. Inadequate annuity amounts for survivors whose spouses die in the early years of judicial service constitute a problem very much in need of a remedy. When judges endure the consequences of salary "compression," the only way to exempt surviving spouses from experiencing a life-long consequence of that compression is to establish a reasonable minimum annuity amount — and the total potential cost of doing so is well below . cost of salary increases which have already been "suspended" or "delayed." Under H.R. 3570 judges are increasing their contributions to five percent of their salaries — an increase of $380 per year for district court judges at the current salary rate. They are willing to do so because they understand that, in the few cases where judges die unexpectedly, with only a few years of service, the "floor" reform which is part of H.R. 3570 is a vitally important improvement in the program.

3. Modification of the computation formula percentage factor

Because the one element in the computation formula which has the greatest direct

influence upon year-by-year increases in annuity amounts — which most directly confers a "premium" or "reward" for each year of service — is the formula percentage factor, increasing that factor from .0125 to .0150 would be the most effective way to realize more adequate annuity amounts and directly recognize both a judge's service and his or her participation in the program. The value of that reform in terms of a structure which rewards each additional year of service is obvious. The Judicial Conference has therefore recommended increasing the percentage factor from .0125 to .0150, and H.R. 3570 would do so. Amounts payable as annuities as a result of this reform are shown in Chart B, appended to this statement. Listed below are examples of the monthly amounts payable today to the surviving spouse of a district court judge and those payable under the new computation formula provided in H.R. 3570.

Years of Service	Current Monthly Amount	H. R. 3570 Monthly Amount
1.5	$ 121.50	$ 145.83
3	237.25	284.66
5	395.42	474.50
10	790.92	949.08
20	1,581.92	1,898.25
30	2,372.83	2,847.42

Amendments to Preserve the Program's Financial Integrity

The previously discussed four amendments to increase annuity amounts inevitably have direct financial consequences. Just as benefit amounts vary depending upon the combination of reforms, so too do the costs to the program. As the costs increase, income must increase to compensate the investment fund. Actuarial evaluations were conducted at the request of the Judicial Conference by the Martin E. Segal Company in 1981 to assess the "percentage of salary" necessary to keep the investment fund actuarially sound.

At present judges who elect to join the program contribute 4.5 percent of their salaries, and the government "matches" their contributions. See 28 U.S.C. § 376(c). Fund earnings, plus the two types of contributions, constitute the program's sources of income. The Martin E. Segal Company actuarial studies indicate that the combined 4.5 percent plus 4.5 percent "contribution rate" very slightly exceeds the 8.58 percent rate necessary to preserve actuarial soundness. Assessments of the potential costs of adding reforms to increase benefit amounts varied from 12.16 percent to 16.72 percent. The following chart graphically portrays the costs of specific "benefit packages" as estimated by the Martin E. Segal Company.

Formula Factor	Benefit Packages: Floor	Benefit Packages: Ceiling	Total Cost Percent of Salary
.0125 *	**.00**	**.40**	**8.58**
.0150	.25	.50	12.16
.0150	.25	.55	12.55
.0150	.30	.50	12.77
.0150	**.30**	**.55**	**13.16**
.0200	.15	.50	14.19
.0200	.20	.50	14.33
.0200	.25	.50	14.55
.0200	.25	.55	15.57
.0200	.30	.50	14.88
.0200	.30	.60	16.72
.0200	.50	.60	19.70

* Existing statutory formula.

The "benefit package" incorporated in H.R. 3570 — a .0150 computation factor, a .30 "floor," and a .55 ceiling — is actuarially estimated to require annual funding equivalent to 13.16 percent of salary. If the existing "matching" contribution arrangement were preserved, both judges and the government would be required to pay between 6.5 and 7.0 percent of salary per year to adequately fund the reformed program. Given the present level of judicial salaries, the Judicial Conference concluded that a modification of the "matching" contribution arrangement would be appropriate. The Conference concluded that slightly increasing judges' contributions and seeking necessary remaining funding from general appropriations would be a justifiable change in the program — and fortunately an easy method exists for doing that.

On November 4, 1978 the President approved Public Law No. 95-595 (92 Stat. 2541) which, inter alia, created a statutory obligation upon the Administrative Office of the United States Courts to file annually a complete "annual" actuarial report on the Judicial Survivors' Annuities program with both the Comptroller General and Congress. The first such report was filed in 1980. Because compliance with the new reporting requirement conveniently provides a regular assessment of the program's annual actuarial condition, that requirement will easily lend itself to use as the "yardstick" by which the amounts in excess of those contributed by participating judges and investment earnings can be measured on an annual basis.

The Judicial Conference has therefore recommended that judges commence contributing 5.0 percent of salary instead of 4.5 percent, as of the effective date of the legislation, and that the government contribute, in lieu of a statutorily established "matching amount," that amount identified as necessary to maintain the actuarial integrity of the program in accordance with each annual actuarial study. Under the Martin E.

Segal Company studies completed for the Conference, the "program life" government contribution was estimated to be 8.16 percent for the "benefit package" incorporated into the bill. That does not mean that every year the government will contribute 8.16 percent to the fund (13.16 - 5.0). Annual studies performed since 1980 reveal that annual earnings experience heavily influences annual actuarial studies. While a "program life" sustaining percentage of 13.16 has been estimated, yearly actuarial studies will determine from one year to another varying annual sustaining rates. In recent years, with good returns on fund investments, annual sustaining rates have been low. In essence, by using a "pay-as-you-go" annual reimbursement method, sustaining "program life" costs can be reduced.

Provisions in H.R. 3570 both respond to the Conference's recommendations and are designed to insulate the general treasury from an unacceptable financial burden. Under H.R. 3570 the Comptroller General of the United States is expressly given increased authority to prescribe the "unfunded liability" of the program, which is defined as the estimated excess determined on an annual basis by the Comptroller of the present value of all benefits payable from the Fund over the sum of: (1) the present value of deductions to be withheld from judicial pay, plus (2) the balance of the Fund as of the date the unfunded liability is determined. If the amount of the government's contribution rises too high, Congress can immediately take action to increase contributions from judges. In explaining this provision in H.R. 3570 to the House in December, Mr. Kastenmeier noted that the House Appropriations Committee had helped his subcommittee fashion the provision, and that:

> ...The amendment clarifies that the government's contribution to the fund will be subjected to the appropriations process. The intent of the amendment is that the Government's contribution will be made only to such amounts as are provided in appropriations acts.
>
> Both committees, Judiciary and Appropriations, are very interested in and deeply committed to keeping costs to a reasonable level. We also want to exercise appropriate oversight. We want to see whether more judges elect to participate, whether the unfunded liability estimates are accurate, and whether the general purposes of the legislation are achieved. Obviously, we also are concerned about any legislation that creates entitlements. Our concerns are reflected in the amendment and the annual appropriations review that will result.
>
> 137 CONG. REC. H12000 (daily ed. Dec. 16, 1985).

Amendments to Adjust Eligibility Standards

Today a surviving spouse receiving an annuity under the Judicial Survivors' Annuity program loses that annuity upon "remarriage," regardless of age at the time of

the remarriage. Both the Civil Service Retirement and Social Security programs now permit retention of the annuity if remarriage occurs after age 55. H.R. 3570 would revise the judicial program to bring it into conformity with Civil Service Retirement and Social Security.

When the 1976 Reform Act was processed, the period of participation in the program in marital status required as a precondition to establishing eligibility for a spousal survivor's annuity was reduced from two years to one year. That modification was a direct result of a similar reduction in the same eligibility period under the Civil Service Retirement statute. See S. Rep. No. 94-799, supra, at 42. At the time the cost for the change was estimated to be inconsequential. Id., at 69. Within two years after enactment of the 1976 Reform Act, Congress revised both the Social Security and Civil Service Retirement program criteria to permit widowed annuitants who had attained age 60 to remarry and retain their survivors' benefits under those two programs. See Pub. L. No. 95-216 and Pub. L. No. 95-318. Prior to those changes, widows who remarried lost their benefits, regardless of age at the time of the remarriage, just as do widows and widowers under the Judicial Survivors' Annuity statute today. See 28 U.S.C. § 376(h)(2). Just last year Congress again revised provisions in the Social Security and Civil Service Retirement programs, reducing the age 60 criterion to age 55. Act of Nov. 8, 1984, Pub. L. No. 98-65, 98 Stat. 3195.

Several judicial widows have expressed their belief that a comparable change should be made in their program. The Judicial Conference assessed the cost of revising 28 U.S.C. § 376 to permit retention of annuity benefits if remarriage were to occur after age 55. The estimated cost was again, as in 1976, found to be inconsequential. The Judicial Conference has recommended that the revision be made, and H.R. 3570 would achieve that reform.

Provisions Permitting Judges to "Opt Into" or "Opt Out Of" The Reformed Program

Section 2 of H.R. 3570 expressly authorizes full retention of earned creditable service by present program participants without assessing additional costs for the derived benefit. When Congress approved the 1976 Reform Act, an authorization was deliberately included to permit judges then participating to transfer into the reformed program those years of creditable service already accumulated—without requiring any additional contribution to cover the cost of the enhanced benefits. See Section 6 of Pub. L. No. 94-554. In other words, a judge "carrying over" could apply his or her years of service at the

pre-existing 3 percent contribution rate in application of an annuity computation formula correlated to the new 4.5 percent contribution rate. The shortfall to the fund was simply absorbed by the fund. As previously noted, there is today a margin of safety outstanding in the fund (the difference between the 9 percent total contribution income rate and the actuarially necessary 8.58 sustaining rate), and actuarial studies indicate that this margin can be relied upon to absorb the cost of again providing express statutory authority for a carry over of creditable service. Section 2 of H.R. 3570 simply duplicates the authorization contained in the 1976 Reform Act.

Moreover, section 2 authorizes an "open season" of 180 days following the legislation's effective date, during which any existing program participant who wishes to leave the program may do so without penalty. In approving the 1976 Reform Act Congress similarly provided a period of 180 days during which judges could choose to carry over into the reformed program or withdraw from the old program and receive a complete refund of contributions plus interest. See Section 7 of Pub. L. No. 94-554. Recognizing that individual judges might not wish to continue participating at higher contribution rates, Congress permitted them to fully withdraw from the program. In this regard, section 2 duplicates the authorization contained in the 1976 Reform Act.

Finally, as was done in the 1976 Reform Act, section 2 authorizes any judge serving on the date of enactment, who has not elected to participate in the JSAS program, to make such an election during a time period following the enactment of the act. Such an express "opt-in" period would eliminate any question that might occur if the statute were silent on this point. Any judges who elect to participate will be required to deposit amounts necessary to qualify their service for credit under the program. Hopefully, greater participation in the program will result — thereby strengthening the actuarial soundness of the entire annuity system.

ADDITIONAL REFORMS NOT EFFECTED BY H.R. 3570

There is one substantive amendment not included in H.R. 3570 which several judges would like this subcommittee to consider. Under the statute today, if a judge's spouse predeceases him or her, and there are no children eligible to receive annuities, the judge must nevertheless continue participation in the program. Although accrued but unpaid amounts and interest are conveyed through the judge's estate upon the judge's death (28 U.S.C. §§ 376(p) and(q)), the few individual judges who have encountered this

problem personally would all have preferred to withdraw from the program. The Conference, through the Administrative Office, would welcome the opportunity to work with this subcommittee to fashion an amendment to provide relief in these rare cases.

Another substantive amendment not included in H.R. 3570 of interest to several judges would entitle those who "retire on salary" under 28 U.S.C. § 371(a) to continue to earn credit in the program for their contributions. Today, under 28 U.S.C. § 376(k)(1) judges electing "retirement on salary" rather than "senior status retirement" do not receive credit for their contributions. By simply striking the words "subsection (b) of" from 28 U.S.C. § 376(k)(1), Congress could effect the equitable reform of permitting all retired judges who are continuing to contribute to the program to have all years of contributing activity credited in the computation of any annuity.

THREE SPECIAL MATTERS OF CONCERN TO THIS SUBCOMMITTEE

In preparing for this hearing, we have been advised that there are three matters of special concern to this subcommittee: (1) a comparison of how annuities payable under the Judicial Survivors' Annuities Program, as reformed by H.R. 3570, will compare with annuities available to surviving spouses and children of Members of Congress; (2) an analysis of survivors' benefits available to judges under the Social Security program; and (3) an analysis of the projected or anticipated "real" annual costs to the government of the new program authorized by H.R. 3570.

Judges' and Members' Survivors' Annuities

"Basic annuities" now available to judges' surviving spouses under provisions in 28 U.S.C. § 376, as amended by the 1976 Reform Act, are graphically displayed in attached Chart A. The amounts shown are designated as "basic" annuity amounts, because they are a direct product of using the "average annual salary" figures at the top of each column in applying the program's existing annuity computation formula (average annual salary x years of service x a factor of 1.25 percent). In other words, the amounts shown are those available to a surviving spouse whose annuity commences on or after the date shown at the top of each column. All amounts for "basic" annuities commencing prior to January 1, 1985, for equal periods of service are smaller. Under existing statutory provisions (28 U.S.C. § 376(1)) the maximum basic annuity amount payable — the "ceiling amount" — may not exceed forty percent of the average annual salary amount. Under

existing provisions the "minimum basic annuity" — the "floor amount" — is equal to the annuity payable after eighteen months of creditable service, an amount equivalant to less than two percent of the "average annual salary" amount.

"Basic annuities" which would become available to judges' surviving spouses under 28 U.S.C. § 376, as amended by H.R. 3570, are graphically displayed in attached Chart B. The amounts shown reflect the consequences of substituting a new factor of 1.5 percent for the presently authorized 1.25 percent annuity computation factor. The additional incremental increase of one-quarter of one percent per year of creditable service constitutes a very conservative adjustment in program benefits — especially when viewed in conjunction with the increase in judicial contributions of one-half of one percent per year required by H.R. 3570.

Because you have asked that we analyze how those annuities compare generally to the survivors' annuities currently available under the civil service retirement system, we have prepared a third attached table, Chart C, which displays "basic" survivor annuity amounts generally payable today to surviving spouses of Members of Congress and surviving spouses of Congressional employees earning salaries payable at the authorized General Schedule rate for "Grade 16" positions. Amounts shown in that table have been computed in accordance with provisions contained in 5 U.S.C. §§ 8339 and 8341, which generally govern survivors' annuities payable under the Civil Service Retirement Program. Those amounts are a direct reflection of the annuity computation formulas and specific salary rates used in determination of the basic retirement annuities payable to the specific officers and employees — because survivors' annuities under the Civil Service Retirement Program are, unlike judicial survivors' annuities, an "incidental" feature of the Civil Service Retirement Program. Under the Civil Service program all survivors' annuities are derived from principal or basic retirement annuities, and in every instance a surviving spouse "is entitled to an annuity equal to 55 percent" of the "basic" or "principal" retirement annuity from which it is derived. See 5 U.S.C. § 8341(b)(1).

Children's annuities under the Civil Service Retirement Program are, as they are under the judges' program, divided into two "classes" — those in which a surviving spouse exists and those in which the surviving children are orphaned. Where a surviving spouse is drawing an annuity, each child receives: (1) sixty percent of the average pay of the civil servant or Member divided by the number of children, or (2) $2,700 divided by the number of children, or (3) $900 — whichever is smallest. If the civil servant or Member leaves no surviving spouse, each child receives: (1) seventy-five percent of the average

pay divided by the number of children, or (2) $3,240 divided by the number of children, or (3) $ 1.080 — whichever is smallest.

In "comparing" survivors' annuities provided by the two programs, the distinction between the two programs' **fundamental** purposes — retirement **and** survivors' annuities in one case, and survivors' annuities **alone** in the other — is important. It is only one of several distinctions which persuaded the Senate Judiciary Committee in 1976 that comparisons between the two programs are inherently more misleading than valuable. The Senate's Committee Report accompanying the 1976 Reform Act repeatedly emphasized the extent to which assuming "equivalency" between the two programs is erroneous (See S. Rep. No. 94-799, supra, at 13, 15-16, 19-20, 23-27, 32-34, 41, and 60-61). Both the Senate and House Judiciary Committees concluded in 1976 that the program authorized by 28 U.S.C. § 376 has always been, and should remain, just as unique as is the nature of an Article III judge's tenure of office. S. Rep. No. 94-799, supra, and H. Rep. No. 94-1604, 94th Cong., 2d Sess. (1976). The **only** purpose served by the Judicial Survivors' Annuity Program is provision of "a program through which judges, by making appropriate contributions, may earn, with their years of service, a reasonable degree of security for their survivors" (S. Rep. No. 94-799, supra, at 62). The principal purpose of the Civil Service program is the provision of **retirement** annuities, rather than survivors' annuities.

While Members generally contribute 8.0 percent of their annual salaries, Congressional employees generally contribute 7.5 percent of their annual salaries, and "General Schedule" employees generally contribute 7.0 percent of their annual salaries to the Civil Service program (See 5 U.S.C. § 8334), their contributions "purchase" retirement annuities for themselves **and** survivors' annuities for spouses and children. Judges now contribute 4.5 percent of their annual salaries to "purchase" survivors' annuities **only**. Under H.R. 3570 that contribution rate will increase to 5.0 percent.

Because annuity payments from the Civil Service program will in most cases be made over a far longer number of years for **two** types of annuities, comparing a surviving spouse's annuity amount under that program to a surviving spouse's annuity amount under the Judicial Survivor's Annuity Program is inherently misleading. The Civil Service program, deliberately designed to achieve multiple objectives, has more than 2,700,000 officers and employees contributing to it. See The Fifty-Seventh Annual Report of the Board of Actuaries to the House Committee on Post Office and Civil Service, 96th Cong., 2d Sess. 3 (Comm. Print No. 96-10, 1980). The Judicial Survivors' program has less than 700 judges contributing to it.

Because H.R. 3570 would establish new minimum and maximum annuity criteria for the Judicial Survivors' Annuity Program, the following table lists the minimum and maximum survivors' annuity amounts available, and the correlative number of years of service required for equivalent amounts, under existing provisions governing both the existing judges' programs and under proposed amendments to 28 U.S.C. § 376:

	Minimum Survivors' Annuity	Correlative Years of Service	Maximum Survivors' Annuity	Correlative Years of Service
Senator or Representative	$16,522	16	$33,044	32
District Judge				
28 U.S.C. 376	1,458	1.5	30,373	32
H.R. 3570	22,780	20	41,763	36.5
Circuit Judge -				
28 U.S.C. 376	1, 542	1.5	32,120	32
H.R. 3570	24.090	20	44,165	36.5
Cong. Employee*	15,114	16	30,228	32

*At the authorized payable rate for a GS-16 position.

The comparative "value" of that information is questionable because survivors' annuities payable under the Civil Service program are "derivatives" of retirement annuities, which in most cases will have been paid for a number of years prior to commencement of payment of survivors' annuities. The comparison is also questionable when we recognize that there is not now and never has been any way to identify the percentage of salary required to sustain the survivor annuity element in the Civil Service Retirement program. Senators and Representatives contribute 8 percent of their salaries to purchase both their own retirement and survivor coverage; under H.R. 3570 judges will contribute 5 percent of their salaries for survivor coverage alone.

In May of 1985, attorneys with the firm of Blum, Nash and Railsback of Washington prepared a comparative analysis of survivors benefits under the Civil Service Retirement program, the existing Judicial Survivors Annuity program, and the proposed reformed judicial program which would be effected by H.R. 3570, using five "hypothetical" cases for purposes of comparision. That analysis is appended to this statement. It dramatically evidences the fairness of establishing a minimum "floor annuity" for the judges' program.

Social Security Survivors' Benefits Available to Judges' Survivors

In the late spring of 1985 the Administrative Office asked Robert J. Myers, a

former Chief Actuary and Deputy Commissioner of the Social Security Administration, who later served as Executive Director of the Greenspan Commission, to prepare an analysis of survivor benefits which might be available to survivors of federal judges under Social Security. Working with actual Social Security records established through 1982, Mr. Myers analyzed the situations of 589 active service judges and 193 judges serving in senior status. The information which follows is derived from Mr. Myers' report in June of 1985 to the Judicial Conference's Committee on the Judicial Branch.

First, in considering senior judges, Mr. Myers assumed that none of them would perform services covered by Social Security after 1985. He determined that 96.3 percent are fully insured under Social Security at this time, and that if they leave a widow or widower, a monthly benefit will be paid if such survivor is at least age 60. Mr. Myers determined that the benefit available if the survivor first makes a claim at age 65 or over would be as follows:

Monthly Benefit	Number of Cases
$100-199	3
200-299	23
300-399	54
400-499	28
500-599	13
600-699	7

Mr. Myers therefore concluded that the vast majority of surviving spouses of existing senior judges will be eligible for a Social Security benefit of between $200 and $500 per month.

While an analysis is more complicated for active judges — because of the uncertainty as to when they will retire — Mr. Myers concluded that, for most current active judges, the amount of a Social Security survivor benefit will inevitably increase the longer that they serve after 1985. He determined that, while about 6 percent of the active judges will not be insured for widow or widower benefits as of the end of 1985, the vast majority of such non-insured judges will become insured within 3 or 4 years. At that time, the widow's benefit available, if claimed at age 65, assuming no further covered employment, will generally be only about $400 per month.

Because approximately 94% of currently serving active judges will be fully insured for survivor benefits at the end of 1985, Mr. Myers estimated the amount of the survivor's benefit if claimed initially at age 65. The following tabulation shows the monthly benefits available under such circumstances:

Monthly Benefit	Number of Cases
$300-399	39
400-499	100
500-599	177
600-699	146
700-799	74
800-899	14
900-999	6

At the request of the Conference, Mr. Myers also analyzed the Social Security survivor benefits which would be available to judges appointed after January 1, 1985, all of whom would be participating in Social Security during the entire duration of their judicial service. Mr. Myers assumed entry on duty at age 50, which has been the approximate average entry-on-duty age of federal judges for more than twenty years, and assumed that spouses would also be age 50 at the time of entry on duty. While most new appointees would have accumulated some degree of prior coverage under the Social Security program, conceivably a few — such as career civil servants — might not have such coverage. Mr. Myers assessed benefits for both.

The following table presents illustrative survivors' benefits for the several cases, assuming that the judge remains in active service with full Social Security coverage until death. As we have seen, the survivor benefit ultimately will be in the neighborhood of $1,000 per month (in terms of 1985 dollars), although the amount will be appreciably lower in the first few years (especially for those with no prior Social Security coverage).

Death on	Age at Death	No Prior Coverage Amount	Maximum Prior Coverage Amount
1/1/95	60	$ 344	$ 579
1/1/00	65	614	843
1/1/05	70	842	1,012
1/1/10	75	923	1,047
1/1/15	80	1,005	1,072
1/1/20	85	1,086	1,086

Mr. Myers' analysis confirmed a basic "fact of life" — that Social Security coverage **alone** can rarely sustain a survivor's standard of living. While judges, especially those entering on duty since 1983, will be assured of the Social Security survivor coverage for their spouses, few will rely on that coverage **alone**. Many will elect to reduce their salaries in addition to the reductions attributable to Social Security by electing membership in the Judicial Survivors' Annuity program — **but only if** that program is regarded as a fair and reasonable investment. With their life-long commitment to judicial service, as noted previously, judges realistically forfeit any expectations of large earnings in future years. They must invest those dollars available for survivor protection with care. Today

they correctly find the Judicial Survivors' Annuity program to be so inadequate — even when combined with the protection they have purchased under Social Security — that they are compelled to seek other forms of protection for their families. H.R. 3570 would transform the judges' program into a far more attractive investment — one which, when combined with Social Security coverage, probably would be perceived by many judges to be "a candle worth the flame."

Costs Associated with H.R. 3570

The Judicial Conference has long recognized that, given the cost of participation in the program for an individual judge, compared to alternative approaches available from banks and insurance companies, modification of the "matching" contribution arrangement would be both an equitable and a direct means of reversing declining participation in the program by newly-appointed judges. The Conference therefore recommended a modest increase in the current contribution rate for judges, from 4.5 percent to 5 percent of annual salary, and a "pay-as-you-go" annual funding arrangement to provide the necessary estimated additional 8.0 sustaining percentage, an increase of 3.0 percent over the required "matching" 5 percent rate. The Conference also identified an easy method for administering the new arrangement. As previously explained, since 1978, under provisions contained in Public Law No. 95-595, the Administrative Office reports to the Comptroller General and the Congress upon the annual fiscal condition of the Judicial Survivors' Annuities Fund. That exercise provides, on an annual basis, a "yardstick" which will enable the Treasury to routinely make necessary adjustments in the program's fund to maintain actuarial stability. If earnings on investments in a given year are inadequate, the "shortfall" can be immediately corrected — and the loss will not be compounded over time. If investment earnings are in excess of the program's minimal requirements, that "windfall" will offset any future unfavorable earnings experience — and consequential reimbursements for compounded deficits.

In accordance with 28 U.S.C. § 376(f), the Secretary of the Treasury manages the Fund's investments. If a year of favorable management meets or exceeds the level of earnings necessary to maintain the Fund's actuarial balance, as determined by the report filed in accordance with Public Law No. 95-595, the Government's contribution will not exceed (and actually might be less than) the amount which would have to be deposited under the existing "matching" provision in 28 U.S.C. § 376(c). If a year of unfavorable investment earnings is experienced, the "deficiency" will be compensated before it leads to "compounding" deficit consequences. In either instance the "annual adjustment"

financing approach which would be authorized under H.R. 3570 will save money. In the one instance favorable earnings experiences will reduce the annual "contribution" amount, and in the other instance any annual deficiency will be corrected before the loss can be compounded and propel the program into a continuing state of actuarial instability.

In its Report to the House of Representatives, the Congressional Budget Office recognized the value of the new annual "pay-as-you-go" approach, and estimated costs associated with H.R. 3570 as follows:

> CBO estimates an increase in revenues to the JSA Fund of $0.3 million in each fiscal year as a result of the 0.5 percent increase in the payroll tax. Budget Authority for the Fund is expected to increase by about $1.9 million in fiscal year 1986 as a result of enactment of this legislation. This increase would grow to about $2.3 million by 1990. As specified in the bill, there would be deposited into the Fund an amount necessary to eliminate the unfunded liability created by the newer, higher benefits. We estimate the amount of the deposit needed to be about $1.9 million in fiscal year 1986. This amount would increase over time as judges' salaries increase. The deposits would be made from the appropriation used to pay judges' salaries. We assume the additional funding needed would result in larger appropriations to the judicial salary account. **This payment would be an intragovernmental transaction and would have no effect on the total budget deficit.**
>
> The estimate of government payments to eliminate the newly created unfunded liability is based on a 1981 report prepared by Segal and Company and information provided by the Administrative Office of the United States Courts. The report estimated the full cost of the benefit package found in H. R. 3585 to be about 13.2 percent of total salary paid to judges and justices. Under the bill, judicial officials would contribute 5 percent of total salary to the fund. The remaining cost would be paid by the federal government resulting in an increase in the government's share of about 3.6 percent of judicial payroll.
>
> Increased benefits paid to new recipients are expected to result in outlay increases to the fund of **less than** $50,000 in each fiscal year through 1990. Outlay increases are expected to be greater beyond our projection period as new eligibles begin to receive compensation under the program.
>
> Estimates relating to the JSA Fund assume no change in the rate of judicial officials' participation in the program. Revenues collected by the fund and payments made by the federal government to eliminate the unfunded liability could be higher or lower if participation rates rise or fall as a result of this bill.

H. Rep. No. 99-423, Part 1, at 24-25 (emphasis added).

CONCLUSION

I noted in my opening remarks the extent to which deterioration of the judges' program has affected judicial personnel across the country. New judges simply are not electing to participate. Many judges who joined the program in reliance upon the promise made by Congress in the 1976 Reform Act now feel events have betrayed that

promise. The Judicial Conference has responded to their apprehensions and disappointment with a set of recommended reforms which is not extravagant — and which is in full accord with the intentions Congress expressed both in 1956, when the program was created, and in 1976, when it was last revised. House passage of H.R. 3570 in December was the most encouraging development since the Conference formulated its recommendations in 1981. Final enactment of that reform legislation in this Congress will provide a tremendously welcome reaffirmation of the commitment to this program demonstrated by the Senate only a decade ago. I welcome the opportunity to work with you to achieve that objective, and I reiterate our appreciation for the opportunity to place these views before you today.

[Charts, prepared by the Administrative Office of the United States Court, follow:]

CHART A

JUDICIAL SURVIVORS' ANNUITY PAYABLE TO SPOUSES ON AND AFTER 01/01/85
Computed By Using the High-Three-Year Average Annual Salary
And a Formula Computation Factor of 1.25 Percent

	District Judge				Current Judge			
Years of Service	01/01/85	01/01/86	01/01/87	01/01/88	01/01/85	01/01/86	01/01/87	01/01/88
High 3:	$72,166	$75,933	$77,800	$78,700	$77,369	$80,300	$82,266	$83,200
1.5 *	1,906	1,950	1,975	1,975	1,980	1,542	1,560	1,560
2 **	1,863	1,933	1,967	1,967	1,971	2,045	2,080	2,080
3	2,793	2,897	2,917	2,951	2,907	3,011	3,094	3,120
4	3,658	3,796	3,890	3,935	3,868	4,015	4,113	4,160
5	4,572	4,745	4,862	4,918	4,835	5,018	5,141	5,200
6	5,487	5,694	5,835	5,902	5,802	6,022	6,169	6,240
7	6,402	6,644	6,807	6,886	6,769	7,026	7,198	7,280
8	7,316	7,593	7,780	7,870	7,736	8,030	8,226	8,320
9	8,231	8,542	8,752	8,853	8,704	9,033	9,254	9,360
10	9,145	9,491	9,725	9,837	9,671	10,037	10,283	10,400
11	10,060	10,440	10,697	10,821	10,638	11,041	11,311	11,440
12	10,974	11,389	11,670	11,805	11,605	12,045	12,339	12,480
13	11,889	12,339	12,642	12,786	12,572	13,048	13,368	13,520
14	12,804	13,288	13,615	13,772	13,539	14,052	14,396	14,560
15	13,718	14,237	14,587	14,756	14,506	15,056	15,424	15,600
16	14,633	15,186	15,560	15,740	15,473	16,060	16,453	16,640
17	15,547	16,135	16,532	16,723	16,440	17,063	17,481	17,680
18	16,462	17,084	17,505	17,707	17,408	18,067	18,509	18,720
19	17,376	18,034	18,477	18,691	18,375	19,071	19,538	19,760
20	18,291	18,983	19,452	19,675	19,342	20,075	20,566	20,800
21	19,206	19,932	20,422	20,658	20,309	21,078	21,594	21,840
22	20,120	20,881	21,395	21,642	21,276	22,082	22,623	22,880
23	21,035	21,830	22,367	22,626	22,243	23,086	23,651	23,920
24	21,949	22,779	23,340	23,610	23,210	24,090	24,679	24,960
25	22,864	23,729	24,312	24,593	24,177	25,093	25,708	26,000
26	23,779	24,678	25,285	25,577	25,144	26,097	26,736	27,040
27	24,693	25,627	26,257	26,561	26,112	27,101	27,764	28,080
28	25,608	26,576	27,230	27,545	27,079	28,105	28,793	29,120
29	26,522	27,525	28,202	28,528	28,046	29,108	29,821	30,160
30	27,437	28,474	29,175	29,512	29,013	30,112	30,849	31,200
31	28,351	29,424	30,147	30,496	29,980	31,116	31,878	32,240
32	29,266	30,373	31,120	31,480	30,947	32,120	32,906	33,280
33	30,180	31,322	32,092	32,463	31,914	33,123	33,934	34,320
34	31,095	32,271	33,065	33,447	32,881	34,127	34,963	35,360
35	32,010	33,220	34,037	34,431	33,848	35,131	35,991	36,400
36	32,924	34,169	35,010	35,415	34,816	36,135	37,019	37,440
37	33,839	35,119	35,982	36,398	35,783	37,138	38,048	38,480
38	34,753	36,068	36,955	37,382	36,750	38,142	39,076	39,520
39	35,668	37,017	37,927	38,366	37,717	39,146	40,104	40,560
40	36,583	37,966	38,900	39,350	38,684	40,150	41,133	41,600
41	37,497	38,915	39,872	40,333	39,651	41,153	42,161	42,640
42	38,412	39,864	40,845	41,317	40,618	42,157	43,189	43,680
43	39,326	40,813	41,817	42,301	41,585	43,161	44,217	44,720
44	40,241	41,763	42,790	43,285	42,552	44,165	45,246	45,760
45	41,155	42,712	43,762	44,268	43,520	45,168	46,274	46,800
46	42,070	43,661	44,735	45,252	44,487	46,172	47,302	47,840
47	42,985	44,610	45,707	46,236	45,454	47,176	48,331	48,880
48	43,899	45,559	46,680	47,220	46,421	48,180	49,359	49,920
*Average Salary:	75,833	77,800	78,700		79,366	82,266	83,200	
**Average Salary:	74,550	77,350	78,700		78,050	81,800	83,200	

CHART B

JUDICIAL SURVIVORS' ANNUITY PAYABLE TO SPOUSES ON AND AFTER 01/01/85
Computed By Using the High-Three-Year Average Annual Salary
And a Formula Computation Factor of 1.5 Percent

	District Judge				Circuit Judge			
Years of Service High 3:	01/01/85 $73,166	01/01/86 $75,533	01/01/87 $77,800	01/01/88 $78,700	01/01/85 $77,369	01/01/86 $80,300	01/01/87 $82,266	01/01/88 $83,200
1.5 =	1,680	1,750	1,770	1,770	1,785	1,850	1,872	1,872
2 =	2,236	2,320	2,361	2,361	2,365	2,454	2,496	2,496
3	3,292	3,416	3,501	3,541	3,481	3,613	3,701	3,744
4	4,389	4,555	4,668	4,722	4,642	4,818	4,935	4,992
5	5,487	5,694	5,835	5,902	5,802	6,022	6,169	6,240
6	6,584	6,833	7,002	7,083	6,963	7,227	7,403	7,488
7	7,682	7,972	8,169	8,263	8,123	8,431	8,637	8,736
8	8,779	9,111	9,336	9,444	9,284	9,636	9,871	9,984
9	9,877	10,250	10,503	10,624	10,444	10,840	11,105	11,232
10	10,974	11,389	11,670	11,805	11,605	12,045	12,339	12,480
11	12,072	12,528	12,837	12,985	12,765	13,249	13,573	13,728
12	13,169	13,667	14,004	14,166	13,926	14,454	14,807	14,976
13	14,267	14,806	15,171	15,346	15,086	15,658	16,041	16,224
14	15,364	15,945	16,338	16,527	16,247	16,863	17,275	17,472
15	16,462	17,084	17,505	17,707	17,408	18,067	18,509	18,720
16	17,559	18,223	18,672	18,888	18,568	19,272	19,743	19,968
17	18,657	19,362	19,839	20,068	19,729	20,476	20,977	21,216
18	19,754	20,501	21,006	21,249	20,889	21,681	22,211	22,464
19	20,852	21,640	22,173	22,429	22,050	22,885	23,445	23,712
20	21,949	22,779	23,340	23,610	23,210	24,090	24,679	24,960
21	23,047	23,918	24,507	24,790	24,371	25,294	25,913	26,208
22	24,144	25,057	25,674	25,971	25,531	26,999	27,147	27,456
23	25,242	26,196	26,841	27,151	26,692	27,703	28,381	28,704
24	26,339	27,335	28,008	28,332	27,852	28,908	29,615	29,952
25	27,437	28,474	29,175	29,512	29,013	30,112	30,845	31,200
26	28,534	29,613	30,342	30,693	30,173	31,317	32,083	32,448
27	29,632	30,752	31,509	31,873	31,334	32,521	33,317	33,696
28	30,729	31,891	32,676	33,054	32,494	33,726	34,551	34,944
29	31,827	33,030	33,843	34,234	33,655	34,930	35,785	36,192
30	32,924	34,169	35,010	35,415	34,816	36,135	37,019	37,440
31	34,022	35,308	36,177	36,595	35,976	37,339	38,253	38,688
32	35,119	36,447	37,344	37,776	37,137	38,544	39,487	39,936
33	36,217	37,586	38,511	38,956	38,297	39,748	40,721	41,184
34	37,314	38,725	39,678	40,137	39,458	40,953	41,955	42,432
35	38,412	39,864	40,845	41,317	40,618	42,157	43,189	43,680
36	39,509	41,003	42,012	42,498	41,779	43,362	44,423	44,928
37	40,607	42,142	43,179	43,678	42,939	44,566	45,657	46,176
38	41,704	43,281	44,346	44,859	44,100	45,771	46,891	47,424
39	42,802	44,420	45,513	46,039	45,260	46,975	48,125	48,672
40	43,899	45,559	46,680	47,220	46,421	48,180	49,359	49,920
41	44,997	46,698	47,847	48,400	47,581	49,384	50,593	51,168
42	46,094	47,837	49,014	49,581	48,742	50,589	51,827	52,416
43	47,192	48,976	50,181	50,761	49,903	51,793	53,061	53,664
44	48,289	50,115	51,348	51,942	51,063	52,998	54,295	54,912
45	49,387	51,254	52,515	53,122	52,224	54,202	55,529	56,160
46	50,484	52,393	53,682	54,303	53,384	55,407	56,763	57,408
47	51,582	53,532	54,849	55,483	54,545	56,611	57,997	58,656
48	52,679	54,671	56,016	56,664	55,705	57,816	59,231	59,904
=Average Salary:	75,033	77,800	78,700		79,366	82,266	83,200	
≈Average Salary:	74,550	77,350	78,700		78,850	81,800	83,200	

CHART C

CIVIL SERVICE RETIREMENT SYSTEM SURVIVORS' ANNUITIES
PAYABLE TO SPOUSES BASED UPON CURRENT SALARY RATES
Computed in accordance with 5 USC §§ 8339 and 8341

	Member of Congress (75,100)		Congressional Employee (68,700)	
Years of Service	Retirement Annuity	Survivor Annuity	Retirement Annuity	Survivor Annuity
1.50	2816	1548	2576	1416
2	3755	2065	3435	1889
3	5632	3097	5152	2833
4	7510	4130	6870	3778
5	9387	5162	8587	4722
6	11265	6195	10305	5667
8	15020	8261	13740	7557
9	16897	9293	15457	8501
10	18775	10326	17176	9446
11	20652	11358	18892	10390
12	22530	12391	20610	11335
13	24407	13423	22327	12279
14	26285	14456	24045	13224
15	28162	15489	25762	14169
16	30040	16522*	27480	15114*
17	31917	17554	29197	16058
18	33795	18587	30915	17003
19	35672	19619	32632	17947
20	37550	20652	34350	18892
21	39427	21684	36067	19836
22	41305	22717	37785	20781
23	43182	23750	39502	21726
24	45060	24783	41220	22671
25	46937	25815	42937	23615
26	48815	26848	44655	24560
27	50692	27880	46372	25504
28	52570	28913	48090	26449
29	54447	29945	49807	27393
30	56325	30978	51525	28338
31	58202	32011	53242	29283
32	60080	33044**	54960	30228**
33	61957	34076	56677	31172
34	63835	35109	58395	32117
35	65712	36141	60112	33061
36	67590	37174	61830	34006
37	69467	38206	63547	34950
38	71345	39239	65265	35895
39	73222	40272	66982	36840
40	75100	41305	68700	37785
41	76977	42337	70417	38729
42	78855	43370	72135	39674
43	80732	44402	73852	40618
44	82610	45435	75570	41563
45	84487	46467	77287	42507
46	86365	47500	79005	43452
47	88242	48533	80722	44397
48	90120	49566	82440	45342

*Minimum surviving spouse's annuity amount. 5 USC § 8341(d)(1).
**Maximum surviving spouse's annuity amount. 5 USC § 8339(f) and § 8341(b)(1).

Senator EAST. Thank you, Judge Coffin.
Judge Hungate.

STATEMENT OF WILLIAM L. HUNGATE

Judge HUNGATE. Mr. Chairman, after Senator Eagleton's generous remarks, there is not anything I can say which will not worsen my position. It reminds me of a political meeting where I was given a quite flattering introduction by a politician. And I said, I am sorry I cannot say the same thing about you. He said, you could if you were as big a liar as I am. So I do appreciate the kindness.

I want to say I appreciate your time. And I know my colleague, Judge Coffin, who served in the House from Maine, and Tom Railsback, who is here with us today and served in the House from Illinois, would agree that the jobs you have in the Congress are the most difficult jobs, of which I think we are aware.

It is tough to be a judge. Remember that when the pay bill is up. But I think we all recognize that those who serve the public in the capacity that you do truly make sacrifices, which perhaps are unrealized by many people. And we appreciate it. And whether we agree with your views or not, I think I found I learned a lot from people with whom I disagree. They make me rethink my position.

You mentioned Gramm-Rudman in passing. I would like for you to know that yesterday I was with a group of about 20 judges, Ralph Mecham of the Administrative Office, who is here today, and we worked from 9 in the morning to something like 9:30 at night trying to bring the judiciary budget down in conformity with that statute. And we believe that as one of the equal branches of the Government, we must be equal in attempting to make that sacrifice.

I am a trial judge in the eastern district of Missouri and have been designated by the president of the American Bar Association to present the views of the national conference of the Federal trial judges and the American Bar Association to this hearing. I appreciate this opportunity and thank you for the opportunity.

The American Bar Association is a nationwide voluntary organization of over 330,000 lawyers, and includes therefor persons from all parts of the legal system, not just judges, civil practitioners, criminal defense lawyers, prosecutors, corporate counsel, Government lawyers, law professors, and others, which would include Senator Heflin, those from the no tie, no telephone, red clay areas of our country.

Our policies reflect a variety of viewpoints arrived at from a number of perspectives. In 1982 the American Bar adopted a resolution supporting enactment by Congress. The predecessor of this legislation is S. 1987, or similar legislation, to reform and improve the existing program for annuities for survivors of Federal judges and justices.

The American Bar strongly supports the principles of the legislation embodied in either H.R. 3570 or S. 1392. We are keenly aware of problems that inadequate survivors annuity has caused within the Federal judicial system. We believe enactment of either of these statutes, H.R. 3570 or S. 1392, would go a long way toward solving these problems.

The current judicial survivors annuity system is an unattractive investment option, especially for new judges. It has not been responsive to inflationary conditions. Changing earnings is dramatically shown by the fact that the committee has already noted the percentage of new judges has dropped from 74 percent in 1978 to about 25 percent or less today. And I have the names of some 25 who have recently resigned. If I may, Mr. Chairman, I would make that available to the committee after the hearing. Some of those you may know and be acquainted with.

The Government is not providing a substantial annuity program to Federal justices and judges. As a result of this, appointment to the Federal bench is less attractive. I will not suggest that necessarily there will be more people that will take these jobs, but I suggest that maybe in my case my wife is much less thrilled—she has to balance the checkbook in our house—much less thrilled with this proposition. The ABA much favors improvements in these three significant areas embodied in H.R. 3570 and S. 1392.

Both bills establish a minimum annuity for spouses of 30 percent. Second, both bills establish a reasonable annuity for the surviving children by using a formula consisting of a percentage of a high 3-year average annual salary rather than the current fixed dollar amount formula. And third, the bills maintain the financial integrity of JSAS by increasing the matching contribution from 4½ to 5 percent of the annual salary.

The American Bar believes that the maintenance of an independent Federal judiciary is absolutely essential to the future of the Nation. Legislation such as you consider here today would help maintain that independent judiciary by providing a system of survivors' annuities to encourage well-qualified lawyers to accept appointments on the Federal bench, and at the same time discourage resignation, of which there have been so many in recent years.

For these reasons the American Bar supports enactment of this reformed legislation. And I take it, Mr. Chairman, our prepared statements are in the record.

Senator EAST. Yes. They will certainly be made a part of the permanent record.

Judge HUNGATE. Thank you. That will conclude my remarks.

[Judge Hungate's prepared statement follows:]

PREPARED STATEMENT OF JUDGE WILLIAM L. HUNGATE

Mr. Chairman and Members of the Committee:

My name is William L. Hungate. I am a Judge of the United States District Court for the Eastern District of Missouri. I am also the Chairman of the National Conference of Federal Trial Judges of the American Bar Association. I have been designated by the President of the Association to present the views of the ABA at this hearing. I am particularly pleased to be here this morning representing the Association and wish to thank the Subcommittee for extending the invitation to participate in these important hearings on reforming the Judicial Survivors' Annuities System.

The American Bar Association is a nationwide voluntary organization of over 320,000 lawyers that includes persons from all parts of the legal system -- not just judges, but civil practitioners, criminal defense lawyers, prosecutors, corporate counsels, government lawyers, law professors, and others. Our policies thus reflect a variety of viewpoints arrived at from a number of perspectives.

In 1982, the ABA adopted a resolution "supporting enactment by Congress of S. 1987, or similar legislation to reform and improve the existing program for annuities for survivors of federal judges and justices." Consistent with that policy, I am here to speak to you today in support of H.R. 3570 and S. 1392, both of which would amend the Judicial Survivors' Annuities Act to improve its benefits.

Mr. Chairman, as you know, those of us who choose to accept positions with the Federal Government -- be it on the bench or

as a Member of Congress -- can never expect to receive salaries which compare with those of our colleagues who work in the private sector. We consciously forego those higher earnings in accepting our positions. The financial sacrifice currently expected of federal judges, however, is exceptionally harsh. Unlike most appointed officials, judges are not expected to spend a few years in government, after which they can return to lucrative private employment. Judges are appointed for life. And, unlike most government employees, judges are closely restricted in their ability to supplement their income. Our spouses and children are subjected to great sacrifices, particularly if we should die in the early years of judicial service. We consider it imperative, therefore, that judges be relieved to the fullest extent possible of an overpowering concern about our families in the event of death. The present annuity program does not provide this peace of mind.

The Judicial Survivors' Annuities System (JSAS) was established to provide death benefit coverage for surviving spouses and children of all federal justices and judges who elect to join the program. However, the promise that "judges, by making appropriate contributions, may earn, with their years of service, a reasonable degree of security for their survivors" has not materialized. The program remains an unattractive investment option, one unresponsive to inflationary conditions and changing earnings conditions. System-wide participation percentages continue to decline, attesting to the program's inadequacy. At the time the program was revised in 1976, 90% of federal judges were participating; last year overall participation declined to 74%. But that figure is being artificially maintained because active and senior status judges may not withdraw from the program once participation is elected. Perhaps a better indication of the program's unattractiveness is the fact that less than 25% of newly

appointed judges elect to join the system, compared to 74% in 1978. This decline is detrimental both to the cost of the program and to the program's usefulness in providing a relevant annuity program for the judicial branch and in helping to attract highly qualified judicial candidates to the bench.

Under the present Judicial Survivors' Annuities System, a hypothetical judge, age 40, with a spouse and three children, ages 5, 8 and 10 years old, faces a frightening insecurity. If that judge were to be killed in an accident at age 50, when the two oldest children would be in college, the total annuity payments to the family would be $14,144 a year, or less than $1200 a month for all four. We think that judicial nominees should not have to choose to burden their families this way.

Enactment of the reforms found in S. 1392 and H.R. 3570 would go a long way toward providing the security which the current Judicial Survivors' Annuities System is lacking.

Annuity Computation Factor. The computation factor used to calculate a surviving spouse's annuity is currently 1.25 %. Under S. 1392 and H.R. 3570, it would be replaced by a new factor of 1.5%. This constitutes a very conservative adjustment in program benefits, but one that realizes more adequate annuity amounts while rewarding longer judicial service. The ABA supports this proposal.

Surviving Spouse's Annuity. Perhaps the most important amendment would be the imposition of a "floor" -- a minimum amount of annuities payable to a judge's survivors. This would ensure that the spouse of a judge who dies at an early age will not be left destitute. Both S. 1392 and H.R. 3570 provide a floor of 30% of a judge's annual average salary, and we strongly endorse this provision.

An annuity amount ceiling of 40% of the average annual salary figure is currently statutorily mandated. H.R. 3570 would increase the annuity "ceiling" to 55%; S. 1392 to 50%. As the law exists today, it takes 32 years for a judge to earn the maximum allowance. Every additional dollar paid into the JSAS program after that time buys no additional annuity benefits. Increasing the ceiling would not extend that cutoff point to below 32 years of service. At the 55% limit, it would take approximately 37 years of judicial service to earn the maximum; at 50% it would take just over 33 years. Relatively few current judges will benefit from this increased ceiling, because few of us remain on the bench for over 32 years. Yet it is worthwhile to avoid discouraging judges from entering the JSAS system with ceilings that are too low. With the appointment of many younger persons to the bench in recent years, this provision is likely to be of increasing importance.

Surviving Children's Annuity. Under the present system, surviving children's annuities are determined by statutorily fixed dollar figures that vary according to whether a surviving spouse is also receiving an annuity. The problem with defining benefits in terms of fixed dollars is that they need constant revision to keep pace with economic reality. However the fixed dollar benefit for children's annuities under JSAS has not been revised since 1976. Both bills would amend the surviving children's annuity provisions by replacing the statutorily designated dollar figures with a formula based on a percentage of the judge's average annual salary. For surviving children where there is a surviving spouse receiving an annuity, each child would receive either an amount equal to 10% of the high-three-year figure or 20% of that figure divided by the number of children, whichever is smaller. In those cases where there is no surviving spouse annuity being paid, each child would receive an annuity equal to 20% of the high-three-year

figure, or an amount equal to 40% of that figure divided by the number of children, or the amount a surviving spouse would have received divided by the number of children, whichever is smaller. This formula remedies the inadequacies of the fixed rate system. We endorse this amendment as a means of ensuring a reasonable children's annuity.

Preserving the Program's Financial Integrity. To help preserve the financial integrity of the JSAS, S. 1392 and H.R. 3570 propose a modification of the matching contribution arrangement. The current contribution rate for judges would increase from 4.5 to 5% of annual salary. The "matching amount" contributed by the government would change to that amount necessary to maintain the actuarial balance of the program, and would be taken from general appropriations. Both are sound amendments which we endorse.

Marital Status of Surviving Spouses. Both S. 1392 and H.R. 3570 incorporate recent modifications in the eligibility criteria for widowed annuitants of other federal survivor benefit programs. Under the present JSAS system, annuity payments to a surviving spouse terminate upon remarriage. H.R. 3570 would permit a surviving spouse to remarry after age 55 without losing benefits. This is the same age criteria Congress recently established for the Social Security and Civil Service Retirement programs. S. 1392 would set the criteria at age 60. The ABA would favor the age 55 criteria in H.R. 3570, thereby making the JSAS program consistent with other federal benefit programs.

The American Bar Association believes that the maintenance of an independent federal judiciary is absolutely essential to the future of our nation. Legislation such as S. 1392 and H.R. 3570 help to maintain that independent judiciary by providing a

system of survivors' annuities that will encourage well-qualified lawyers to accept appointments to positions on the Federal bench, and will at the same time discourage resignations, of which there have been so many in recent years. It will also remove some of the anxiety and distraction which the current inadequate system engenders. Finally, basic notions of fairness to the families of these public servants strongly suggest the need for improving the current system.

Senator EAST. Thank you.

I appreciate your general comments and I am sympathetic to them. So we really do not have any disagreement on the general goal of trying to improve this annuity program. I would, however, like to inquire on the broader question of the kind of compensation that we are giving to our Federal judges—district, circuit, Supreme Court—whether one of the most critical problems in terms of remuneration is annuities?

As I understand it, we are down to about 24 percent participation in the survivors' annuities program.

Judge HUNGATE. That is true.

Senator EAST. Which is obviously incredibly low. Now, I gather that the other 75 percent or 76 percent are trying to do it some way or another through IRA's or some kind of private program. How satisfactorily they're doing it, I do not know. Perhaps there is some evidence on it. But I suppose what I was driving at here is—granted we cannot do this at this time—whether the salaries involved in these jobs are not as much the critical problems as may be the annuities problem?

That is, if one is adequately compensated, that does not mean you do not want an annuity program, but if one is adequately compensated, then you can devise what sort of retirement program you might wish via the public and private sector. I would just be interested on your thoughts on that. Is this a small portion of a much greater problem, namely the problem of salary?

Judge HUNGATE. I think you are right, Mr. Chairman, that that is part of the problem. Of course, the part of the salary problem is a very difficult and sensitive one to approach, as you are fully aware.

Senator EAST. More difficult than this.

Judge HUNGATE. Yes, sir. As one who served in the legislative branch, why does Congress not raise their own salaries to $150,000? They're worth it and we are worth it. But unless you answer the mail and have people talk across your desk, you cannot understand why that is pretty difficult to do.

I would say that the salary is a problem. But along the same lines—and I am being candid at this time—my wife was not at all thrilled. I was making more money in a large law firm, and they were treating me very well.

There is a certain honor that goes with being a judge. I could have a light like that one you have, when I turn on the red one,

they are supposed to stop talking. There is an honor and privilege. And you can feel you are serving the country. I do not know that that carries down to your young children or your wife who are asked to make probably the real sacrifices.

Judge COFFIN. They are both two big problems. They are different. That is, I suppose, that if we took a poll of all the judges, what would you personally like to see most? They would say, well, we would like to see compensation. But there would be a number—maybe these 208 widows would say, if we had adequate survivor's annuity, we would not be struggling along at $14,000 a year.

And, of course, the children, 10 children being supported, are in a probably deplorable situation. So where it hits, it hits very hard. Improving survivors' annuities would not receive as many votes as compensation. But we have felt in working for this, that there is nothing more important. It spells the difference between a life with dignity and a life without any dignity at all. It is a different quality. But I would hate to have to choose between them, Mr. Chairman.

Senator EAST. But beyond salary, survivors' annuities would seem to be the greatest compelling need of the judiciary?

Judge COFFIN. I would say so.

Judge WILLIAMS. I would say so. I've had more calls about it than any other legislation.

Senator EAST. That is really what I was asking. In terms of the priority of concern, this is at the top. The only thing that might eclipse it would be the matter of doubling the salary, which is always pleasant to contemplate.

Judge HUNGATE. I think the costs of this bill, I think, would be less than if you paid all the judges what they think they are worth.

Senator EAST. I would agree. I think the likelihood of the latter is not great at this time.

Senator Heflin.

Senator HEFLIN. Well, of course, on the question of comparison of compensation versus annuity plans, judges generally come from lawyer ranks, we know that. They usually have been successful or they would not be deemed qualified. And you have to look at what their counterparts, former partners, are making and what the program is for their survivors.

And if we did that, as a general rule I would not say it would turn out exactly, but it would probably be at least double in compensation.

But on the other hand, you also have a deferred compensation, other things that take place in the corporate world but do not take place in the law firms or professional associations, and that do not take place in the judiciary. So there are all sorts of fringe benefits that you give up. And the wife who is still the friend of the law partner's wife, compares this. And if they become widows at the same time, there would be considerable differences.

So, I think, it is a matter of relativity. Some Senators are looking at a comparison of the retirement system of the Senate and the House of Representatives with judicial retirement. This was addressed in 1976 in this committee. The committee report came to the conclusion that comparison of the two programs was mislead-

ing. It emphasized that you could not assume equivalency between the two programs.

It is interesting to go back and review that. It is now interesting to see what you would propose to do on the basis of this. You are proposing 5 percent for the Judicial Survivors' Annuity plan under the House bill, whereas the Senate contribution, as well as the House of Representatives contribution, is 8 percent. So in effect you are directing that five-eighths of the total contribution goes to retirement benefits, whereas three-eighths goes toward the annuity program for survival benefits.

On the other hand, people argue that judges receive their compensation for life. But still, this is a contribution that is taken from your salary if you elected to go under the procedure.

I think on a comparison basis, too, that there are other things that we have to look at. As I recall, I do not believe Federal judges are eligible for honorariums for speeches and things of that type, outside income from earned income. Senators have earned income from honorariums and everything else. I think we have to look at this when we attempt to try to compare.

Judge Williams, you told a story about Judge West, who he had served and his widow drew $308 a month.

Judge WILLIAMS. That is true.

Senator HEFLIN. And his three children $142?

Judge WILLIAMS. That is right, three. Now they are all grown up.

Senator HEFLIN. Where was he from?

Judge WILLIAMS. New Orleans. I think she was from your State.

Senator HEFLIN. I thought that might have been true. It seems to me that I thought that she had some connection in God's land.

Judge WILLIAMS. She has since remarried and is living in your State.

Senator HEFLIN. All right, sir. I believe that is all I have.

Senator EAST. I have no further questions. If any of you gentlemen would like to add an additional thought or comment, observation to conclude, we would be delighted to have it. If not——

Judge COFFIN. We are all deeply honored and pleased that you have scheduled this and given us a chance at this time to advance this legislation.

Judge WILLIAMS. Very much so.

Judge HUNGATE. I concur.

Senator EAST. As I indicated, we would like to leave the record open for any member of the subcommittee who might wish to submit questions to you.

Judge HUNGATE. Thank you, Mr. Chairman.

Senator EAST. Thank you gentlemen, thank you.

[Whereupon, at 11:30 a.m., the subcommittee concluded at the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

NINETY-NINTH CONGRESS

PETER W. RODINO, JR., NEW JERSEY, CHAIRMAN

JACK BROOKS, TEXAS
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
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DAN GLICKMAN, KANSAS
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HARLEY O. STAGGERS, JR., WEST VIRGINIA
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HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
THOMAS N. KINDNESS, OHIO
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WILLIAM E. DANNEMEYER, CALIFORNIA
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PATRICK L. SWINDALL, GEORGIA
HOWARD COBLE, NORTH CAROLINA

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ASSOCIATE COUNSEL
ALAN F. COFFEY, JR.

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515
Telephone: 202-225-3951

February 24, 1986

The Honorable John East
Chairman
Subcommittee on Courts
Room 163 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Chairman East:

Thank you for the invitation that you extended to testify before your subcommittee on the Judicial Improvements Act of 1985 (H.R. 3570). Due to a conflict in my schedule, I was unable to appear. I would, however, like to note the importance of the legislation, not only to me and my subcommittee, but also to the House of Representatives. I therefore ask that you insert the attached statement in support of the legisation at an appropriate place in your Subcommittee's hearing record.

With best wishes, I am

Sincerely,

ROBERT W. KASTENMEIER
Chairman
Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

RWK:mrm

Enclosure

STATEMENT OF ROBERT W. KASTENMEIER

BEFORE

THE SENATE JUDICIARY SUBCOMMITTEE ON COURTS

ON H.R. 3570

FEBRUARY 18, 1986

Mr. Chairman, thank you for scheduling hearings on H.R. 3570, the Judicial Improvements Act of 1985. The proposed legislation has the highly desirable goal of improving this Nation's justice system. Each part of the bill may appear relatively insignificant but, considered collectively, the legislation will provide a significant improvement to federal judicial machinery.

H.R. 3570 passed the full House of Representatives unanimously by voice vote on December 16, 1985. The bill has been endorsed by the Judicial Conference of the United States, the Federal Judges Association, the American Bar Association and the Administration. Two sections of the bill -- section 2, relating to judicial survivors annuities, and section 6, relating to judicial review of Federal Maritime Commission and Maritime Administration orders -- have passed the Senate in virtually the same form as they are presented to the subcommittee today. In addition, another section -- section 4, which relates to actual travel expenses -- has already been signed into law by President Reagan.

Every provision in the omnibus bill received virtually unanimous support in the House and, as yet, opposition to any section is non-existent. Let me assure you that the bill received full and fair hearings in my subcommittee. The record is printed and I am prepared to share copies with interested Senators and staff. I would further refer you to the House

Report (No. 99-423), which contains a detailed explanation of H.R. 3570.

A brief summary of the Judicial Improvements Act follows. Emphasis is placed on section 2 -- the most important section of the bill -- which reforms the Judicial Survivors Annuities System (JSAS).

Section 1 of the bill is the short title: Judicial Improvements Act of 1985.

Section 2 reforms and improves the existing annuities program for survivor's of judges and justices. You may recall the impoverishment of Marion Frankfurter, wife of Supreme Court Justice Felix Frankfurter, near the end of her life due to the federal government's inadequate annuity program for survivors of judges and justices. Although slight changes have been made in that program over time (and the Senate Judiciary Committee deserves credit for these changes), the JSAS system is still badly in need of repair and threatens the quality of our judicial system.

The Federal Judiciary has long been concerned about the inadequate annuity program provided to widows, widowers, and children under existing law. In fact, a highly respected U.S. Court of Appeals Judge for the Second Circuit resigned in 1981, citing inadequate survivor's benefits as a reason for his decision. In his resignation statement, Judge William Hughes Milligan reflected on the compensation situation affecting federal judges: "You can live on it, but you can't die on it." Other federal judges have resigned for similar reasons.

In short, unless remedied, defects in the current annuities system make it difficult to attract and to maintain quality

judges, especially those concerned with their family's welfare. H.R. 3570 will increase these annuity benefits. More importantly, the bill will create a minimum floor similar to that provided for the survivors of Members of Congress who die in office.

Parenthetically, section 2 of the bill includes the provisions of H.R. 3081, a bill cosponsored by 63 Representatives, reflecting a broad cross-section of the House membership. In addition, section 2 builds upon a legislative scheme, elective for federal judges, which was created by Congress in 1956 and later updated in 1976 (pursuant to initiatives of the Senate Judiciary Committee).

It is clear, even to the casual observer, that the Annuities Program has not kept pace with comparability adjustments in federal judicial salaries. As a result of annuity payment amounts not increasing as anticipated, participation in the program for new judges entering on duty has dramatically diminished. Today fewer than 25 percent of newly appointed judges elect to participate. In essence, recently appointed federal judges are routinely concluding that the program is "a whistle which isn't worth the penny." At the very least, inadequacies in the existing system have an effect on whether highly qualified individuals accept or reject a Presidential call to become a federal judge or whether a sitting judge will stay on the bench or resign. Section 2 attempts, by increasing annuity payment amounts by both judges and the Federal Government, by creating a minimum floor annuity, and by establishing an accelerated schedule of benefit amounts, to revitalize the existing program.

Section 3 of the bill amends 28 U.S.C. 1441 to provide that a federal court in which an action is removed from state court is not barred from hearing and determining a claim because the

state court lacked jurisdiction over it. This modest jurisdictional change will substantially strengthen the fabric of federalism in our justice system.

Section 4 amends the statute governing reimbursement of travel expenses for judges while working away from their official duty stations, 28 U.S.C. 456. The amendment provides generally that judges are to be reimbursed for actual and necessary transportation and reasonable subsistence expenses incurred in such circumstances, in accordance with regulations prescribed by the Director of the Administrative Office of the U.S. Courts with approval of the Judicial Conference. It has already been enacted into law as a result of an initiative to provide comprehensive reform of the travel reimbursement system for all federal employees. See Public Law 99-234. Section 4 therefore should be deleted from H.R. 3570.

Section 5 of the bill makes the fees charged in the D.C. District Court the same as the fees charged in other district courts -- $60 for each civil filing. This modification will place the D.C. District Court on an equal footing with all the other federal district courts, which is where it deserves to be. H.R. 3570 contains requisite conforming amendments to the D.C. Code.

Section 6 of the bill clarifies the intended impact of the Shipping Act of 1984 by providing for judicial review -- in the circuit courts of appeals -- of certain orders of the Federal Maritime Commission and the Maritime Administration. Unfortunately, the Shipping Act of 1984 did not contain a clear and concise judicial review provision. Rather than curing drafting problems in the Maritime Appropriation Authorization Act for fiscal year 1986, which was originally proposed in a Senate-passed bill (S. 679), section 6 solves the problem. This change

will have a positive effect on the agencies involved as well as litigants who must seek judicial review.

Section 7 of the bill sets forth two technical amendments to title 28 United States Code.

In closing, thank you for holding these hearings. I urge the subcommittee to approve the Federal Court Improvements Act of 1985 without delay. I also look forward to working with you --- and your Senate Committee -- on two other House-passed bills (H.R. 3004, Criminal Justice Act Improvements, and H.R. 3550, Rules Enabling Act Reform) that recently passed the House of Representatives.

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

March 5, 1986

The Honorable John P. East
Chairman
Subcommittee on Courts
Committee on the Judiciary
Dirksen Senate Office Building, Room 163
Washington, D.C. 20510

Dear Mr. Chairman:

I would like to present the views of the Federal Maritime Commission (Commission or FMC) on H.R. 3570, a bill "to reform and improve the Federal justices and judges survivors' annuities program, and for other purposes." Our interest lies solely with section 6, which would amend title 28 of the United States Code to provide for the judicial review of certain orders of the Commission and the Maritime Administration in the United States courts of appeals.

In essence, this section would amend the Administrative Orders Review Act of 1950, 28 U.S.C. § 2342, to clarify that all rules, regulations and final orders issued by the Commission pursuant to the five major statutes over which it has jurisdiction will be initially reviewed in the United States courts of appeals rather than first in the federal district courts, with a subsequent right of appeal to the courts of appeals.

For the reasons which follow, the Commission strongly supports these changes and urges prompt passage of this bill.

The need for this legislation became apparent after the recent enactment of the Shipping Act of 1984, 46 U.S.C. app. § 1701, et seq. (1984 Act), a successor to the Shipping Act, 1916, 46 U.S.C. app. § 801, et seq. (1916 Act), with respect to the regulation of U.S. waterborne foreign commerce. Prior to that time, almost all final orders of the Commission (including rules and regulations) were initially reviewed by the United States courts of appeals pursuant to the Administrative Orders Review Act. This statute gave the courts of appeals exclusive jurisdiction over final orders of the Commission ". . . entered under chapters 23 and 23A of title 46 . . . ." 28 U.S.C. § 2342 (3). Chapter 23 contains the 1916 Act and Chapter 23A the Intercoastal Shipping Act, 1933 (1933 Act). The only exception to this procedure was Commission orders issued under section 19 of the Merchant Marine Act, 1920. 46 U.S.C. app. § 876.

The 1984 Act, however, failed to make any general provision for review of Commission orders issued pursuant to it. The only specific reference to judicial review of Commission orders in the 1984 Act occurs in the context of orders assessing civil penalties, which are made reviewable ". . . under chapter 158 of title 28.", i.e., the

Administrative Orders Review Act. 46 U.S.C. app. § 1712(d). Such orders, however, comprise only a very small portion of the types of orders which the Commission has historically issued. As a result, absent any general review provision in the 1984 Act or concurrent amendment of the Hobbs Act, the vast majority of rules, regulations and final orders issued by the Commission pursuant to the 1984 Act must first be reviewed in federal district courts pursuant to 5 U.S.C. §§ 702-704 and 28 U.S.C. § 1331. This anomalous treatment of orders under the 1984 Act serves no valid purpose. Moreover, the Commission believes that there are several compelling reasons for adopting legislation which would correct this situation and make all final Commission orders subject to initial review in the courts of appeals.

As an initial matter, it does not appear that Congress specifically intended the present situation. There is nothing in the legislative history of the 1984 Act which addresses the issue of judicial review generally or, in particular, the resulting difference in treatment from orders issued by the FMC under other statutes administered by it. Congress' failure to amend 28 U.S.C. § 2342 to include therein orders issued pursuant to the 1984 Act therefore appears to have been inadvertent. It may have been incorrectly assumed that the Administrative Orders Review Act would apply to orders issued under the 1984 Act. See S. Rep. No. 64, 99th Cong., 1st Sess. 6, 7 (1985).

Adoption of the proposed legislation would, as noted above, make review of orders under the 1984 Act consistent with review under the 1916 Act and the 1933 Act. Since the enactment of the Administrative Orders Review Act in 1950, final orders under these latter two statutes have been subject to exclusive initial review in the United States courts of appeals. Though the 1916 Act and the 1933 Act apply to waterborne transportation in the domestic offshore trades and the 1984 Act applies to ocean transportation in the foreign commerce, all three deal with similar issues and in many instances contain similar prohibitions. There is no apparent reason for treating review of orders under these statutes differently. Congress' decision to subject orders under the 1916 Act and 1933 Act to review in the courts of appeals supports similar treatment for orders issued under the 1984 Act.

In the absence of an express grant of review authority in the courts of appeals, either in an enabling statute or in the Administrative Orders Review Act, an administrative agency's orders would be first reviewed in the federal district courts pursuant to 5 U.S.C. §§ 702-704 and 28 U.S.C. § 1331, and then subsequently subject to review in the courts of appeals. However, the trend has been to eliminate this double layer of review, and to make agency orders directly reviewable in the courts of appeals. See generally, C. Wright, A. Miller, and E. Cooper, 13 Federal Practice and Procedure, § 3568, at 463 (1975); id. at 15 Supp., § 1368 at 365 (1980); K. Davis, Administrative Law Treatise, § 23.3, at 130-131 (2d Ed. 1983). In fact, the vast majority of important administrative agency actions are now reviewable initially in the courts of appeals, rather than the district courts. K. Davis, id. (For a partial list of such agency actions see 16 C. Wright, A. Miller, and E. Cooper, supra, § 3941, at 304-308 (1977)). The Administrative Orders Review Act itself gives the courts of appeals exclusive jurisdiction over certain orders of the Federal Communications Commission, the Department of Agriculture, the Maritime Administration, the Atomic Energy Commission, and the Interstate Commerce Commission.

Moreover, the two-layered system of review has been criticized as wasteful and time consuming by both treatise writers and courts. See, e.g., 4 K. Davis, supra, § 23.3 at 130-131, § 23.5 at 133-134; 13 C. Wright, A. Miller, and E. Cooper, supra, § 3940 at 302; Polcover v. Secretary of Treasury, 477 F.2d 1223, 1227 (D.C. Cir.), cert. denied, 414 U.S. 1001 (1973). Administrative agencies perform the same functions with respect to the courts of appeals as do district courts. In both FMC rulemaking and adjudication proceedings, an administrative record is prepared and reviewed and issues are identified and resolved. In many FMC proceedings, the issues are subject to the further testing of intra-agency review on appeal from an administrative law judge and resolution by a collegial body - the Commissioners. The questions open for judicial review are commonly questions of law, or review of a record for substantial evidence to support the administrative decision or assurance that the agency action is not arbitrary, capricious, or an abuse of discretion - matters as to which a district court would play the same role as a court of appeals. This would appear to result in inefficient use of government and judicial resources.

In addition, initial review by a district court burdens and delays the judicial process by imposing an additional, expensive layer of review. It was, in fact, just such considerations which motivated Congress to place final agency orders issued pursuant to the 1916 Act and the 1933 Act under direct court of appeals review in 1950. See H.R. Rep. No. 2122, 81st Cong., 2d Sess. 3-5 (1950), reprinted in 1950 U.S. Code Cong. Serv. 4305-4307.

Review of all FMC final orders under the Administrative Orders Review Act will, moreover, ensure that such review is made in a timely fashion, i.e., 60 days after entry of such an order. See 28 U.S.C. § 2344. Absent application of that statute, FMC orders would be subject to district court review at any time, leaving the agency subject to open-ended attacks on its decisions, limited only by the uncertain defense of laches. See e.g., D.B. Ford, Inc. v. U.S., 380 F.Supp. 1202, 1207-1208 (D. Minn. 1974). The presence of such open-ended attack was one of the reasons why orders of the Interstate Commerce Commission were subjected to court of appeals review under the Administrative Orders Review Act. See H.R. Rep. No. 1569, 93d Cong., 2d Sess. 4, 9 (1974), reprinted in 1974 U.S. Code Cong. and Ad. News 8150, 8155.

Moreover, when new statutory authority was recently given to the Interstate Commerce Commission, the Administrative Orders Review Act was specifically amended at that time to ensure that actions under that new authority would be reviewed by the courts of appeals, rather than federal district courts. See Household Goods Transportation Act of 1980, § 8(b)(2), P.L. 96-454, 94 Stat. 2021, 49 U.S.C. § 1190(i)(2); H.R. Rep. No. 497, 96th Cong., 2d Sess. 16 (1980), reprinted in 1980 U.S. Code Cong. and Ad. News 4286-4287. Similar treatment for the FMC as a result of the Shipping Act of 1984 would seem to be appropriate.

Amendment of the Administrative Orders Review Act to provide for judicial review of all final FMC orders initially in the courts of appeals will make uniform the form of review of final FMC orders and result in the prevention of needless delay and expense to the government and private parties.

The only aspect of the proposed legislation which causes us some concern is subsection 6(b), which relates to the effective date of the amendment. It provides that the amendment will apply only to rules, regulations or orders "issued on or after the date of enactment of this Act." As a result, any rule, regulation or order issued by the Commission between the effective date of the Shipping Act of 1984 (June 18, 1984) and the enactment of this Act would be subject to initial review in district court with a subsequent right of review in the courts of appeals. The Commission believes that the better method of treating the effective date would be to have it apply to any suit or action commenced after the amendment is enacted which seeks to enjoin, set aside, suspend (in whole or part), or to determine the validity of a Commission rule, regulation or order. This would ensure that suits challenging the Commission's rules and orders issued during the interim period between June 18, 1984 and the enactment of H.R. 3570 would be reviewed in the courts of appeals. Such a resolution would be consistent with the Senate's prior treatment of this issue. See S. 679, 99th Cong., 1st Sess., 131 Cong. Rec. 7481 (1985); S. Rep. No. 64, 99th Cong., 1st Sess. 7 (1985).

In sum, the Commission strongly supports section 6 of H.R. 3570 and, with the suggested change offered above, urges its prompt passage.

Sincerely,

Edward V. Hickey, Jr.
Chairman

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ACCOUNTING AND FINANCIAL
MANAGEMENT DIVISION

MAR 13 1986

B-220346

The Honorable John P. East
Chairman, Subcommittee on Courts
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

The purpose of this letter is to comment on a bill being considered by your subcommittee--H.R. 3570, the Judicial Improvements Act of 1985. We are commenting because the bill provides a new responsibility for the Comptroller General: that he determine annually the unfunded liability of the Judicial Survivors' Annuities Fund. We oppose this new responsibility because it is inconsistent with the Comptroller General's present authority to audit federal pension plans in accordance with 31 U.S.C. 9503.

Under the provisions of 28 U.S.C. 376, annuities are provided for survivors of certain judicial officials of the United States from the Judicial Survivors' Annuities Fund. Judicial officials who are covered by the plan make contributions in the amount of 4.5 percent of salary. The survivors' fund also receives matching contributions from a fund used to pay the compensation of the judicial officials and interest on investments.

The Judicial Survivors' Annuities Fund, along with other federal pension plans, is also subject to the provisions of 31 U.S.C. 9501-9504, which requires it to submit annual reports to the Congress and the Comptroller General disclosing the financial status of the plan. Section 9503 provides for the Comptroller General to issue instructions for the judicial plans to follow in preparing the annual reports. To comply with the legislation and the instructions, the plan must make certain actuarial computations estimating the unfunded liability and other projections. The report must also include the opinion of an enrolled actuary stating that the actuarial assumptions are reasonably related to plan experiences and expectations and represent the actuary's best estimate of anticipated experience under the plan, and that the report is complete and accurate. Subsection (a)(5) of 31 U.S.C. 9503 also provides that when the Comptroller General deems it appropriate, he shall perform audits of the reports required to be filed by the federal pension plans.

B-220346

Section 2(a)(3) of the proposed legislation would change the government's annual contribution from a matching contribution to an annual amount required to reduce to zero the unfunded liability. It also provides that the Comptroller General shall annually determine the unfunded liability, as defined in the bill, using the information contained in the plan's report filed pursuant to 31 U.S.C. 9503. We believe that it would be inappropriate for the Comptroller General to determine the unfunded liability, in that such participation would be inconsistent with the concepts of independence and objectivity implicit in any of our audits of the Judicial Survivors' Annuities Fund under 31 U.S.C. 9503. Accordingly, we urge that the reference therein to the Comptroller General be deleted.

A prior Senate bill, S. 1392, did not require the Comptroller General to compute the amount of the government's contribution. Rather, in section 2, it provided for the contribution to be determined annually in accordance with procedures prescribed by the Comptroller General under the provisions of 31 U.S.C. 9501-9504. We favor the Senate bill's provision in that it retains the plan's current responsibility for determining actuarial amounts, rather than involving the Comptroller General. This allows the Comptroller General to maintain independence in audits of the Judicial Survivors' Annuities Fund.

We appreciate the opportunity to comment on H.R. 3570. Should you have any questions or comments, please contact Mr. Robert W. Gramling of my staff on 275-9406 to arrange a meeting.

Sincerely yours,

Frederick D. Wolf
Director